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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

Processed Fruits and Vegetables

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations governing inspection and certification for processed fruits, vegetables, and processed products made from them by a fee increase ranging from 8 to 11 percent charged for the inspection services. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services under the Agricultural Marketing Act of 1946 and to ensure the program's financial stability. Also affected are the fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Act of 1937.

EFFECTIVE DATE: October 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Terry B. Bane at the above address, call (202) 720-4693, or e-mail Terry.Bane@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This 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. Also, pursuant to the requirements of the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The Agency has and

will continue to seek out cost savings opportunities and implement appropriate changes to reduce its costs. Such actions can provide alternatives to fee increases. The fee schedule was last revised on November 19, 2000 (63 FR 66485). However, even with cost control efforts, the existing fee schedule will not generate sufficient revenues to cover the lot, year round, and less than year round processed fruit and vegetable inspection program costs and sustain an adequate reserve balance (4 months of costs) as called for by Agency policy (AMS Directive 408.1).

AMS projects that program costs will increase to approximately \$14.4 million in FY 2004 and \$14.9 million in FY 2005, primarily from increases in employee salaries and benefits. An estimated 3.4 percent pay increase for employees effective January 2004 and January 2005 will increase program costs approximately \$375,000 in FY 2004 and approximately \$390,000 in FY 2005. Without a fee increase, the FY 2004 and FY 2005 end-of-year reserve balances will decline from \$4.3 million to \$3.6 million (3.0 months reserve), and \$2.4 million (1.9 months reserve), respectively. The required 4 month level should be approximately \$5.0 million. The final fee increase ranging from 8 to 11 percent will increase revenue by \$1.3 million per year and will enable AMS to replenish program reserves to a 4 month level, approximately \$5.0 million, for both FYs 2004 and 2005.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. This action will increase user fee revenue generated under the lot inspection program and the year round and less than year round inspection programs by approximately \$1.3 million annually. This action is authorized under the AMA of 1946 [see 7 U.S.C. 1622(h)] which provides that the Secretary of Agriculture assess and collect "such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *".

There are more than 1,250 users of PPB's lot, year round, and less than year round inspection services (including applicants who must meet import requirements,¹ inspections which

amount to under 2 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). There will be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this rule. AMS has not identified any other federal rules which may duplicate, overlap, or conflict with this final rule.

The impact on all businesses, including small entities, is very similar. Further, even though fees will be increased, the amount of the increase is small (ranging from 8 to 11 percent), and should not significantly affect these entities. Finally, except for those applicants who are required to obtain inspections in connection with certain imports these businesses are under no obligation to use these inspection services.

Executive Order 12988

The rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Final Action

A proposed rule was published in the **Federal Register** at 68 FR 46504 on August 6, 2003, providing interested persons with a thirty-day period to comment. No comments were received.

The AMA authorizes official inspection, grading, and certification for processed fruits, vegetables, and processed products made from them. The AMA provides that the Secretary collect reasonable fees from the users of the services to cover, as nearly as

604), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect.

Currently, there are 4 processed commodities subject to 8e import regulations: canned ripe olives, dates, prunes, and processed raisins. A current listing of the regulated commodities can be found under 7 CFR Parts 944 and 999.

¹ Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-

practicable, the costs of the services rendered. This rule will amend the schedule for fees for inspection services rendered to the processed fruit and vegetable industry to reflect the costs necessary to operate the program.

AMS regularly reviews its user fee programs to determine if the fees are adequate. While AMS continues to pursue opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover lot, year round, and less than year round inspection program costs while maintaining an adequate reserve balance.

Based on the Agency's analysis of increasing program costs, AMS will increase the fees relating to lot, year round, and less than year round inspection services.

AMS projects that program costs will increase to approximately \$14.4 million in FY 2004 and \$14.9 million in FY 2005, primarily from increases in employee salaries and benefits. An estimated 3.4 percent pay increase for employees effective January 2004 and January 2005 will increase program costs approximately \$375,000 in FY 2004 and approximately \$390,000 in FY 2005. Without a fee increase, the FY 2004 and FY 2005 end-of-year reserve balances will decline from \$4.3 million to \$3.6 million (3.0 months reserve), and \$2.4 million (1.9 months reserve), respectively. The required 4 month level should be approximately \$5.0 million. The final fee increase ranging from 8 to 11 percent will increase revenue by \$1.3 million per year and will enable AMS to replenish program reserves to a 4 month level, approximately \$5.0 million, for both FYs 2004 and 2005.

For inspection services charged under § 52.42, overtime and holiday work will continue to be charged as provided in that section.

For inspection services charged on a contract basis under § 52.51 overtime work will also continue to be charged as provided in that section. The following fee schedule compares current fees and charges with final fees and charges for processed fruit and vegetable inspection as found in 7 CFR §§ 52.42–52.51. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 52.42 are:

Current	Final
\$47.00/hr.	\$52.00/hr.

Charges for travel and other expenses as found in § 52.50 are:

Current	Final
\$47.00/hr.	\$52.00/hr.

Charges for year-round in-plant inspection services on a contract basis as found in § 52.51(c) are:

(1) For inspector assigned on a year-round basis:

Current	Final
\$36.00/hr.	\$39.00/hr.

(2) For inspector assigned on less than a year-round basis: Each inspector:

Current	Final
\$48.00/hr.	\$52.00/hr.

Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis as found in § 52.51(d) are:

(1) Each inspector:

Current	Final
\$48.00/hr.	\$52.00/hr.

It is preferable to have the fee increase to be in place at the beginning of the fiscal year, October 1, 2003, which is also the beginning of a billing cycle. Further, a thirty day comment period was provided for interested persons to comment on this proposed action. No comments were received regarding this proposed rule.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, and Vegetables.

■ For the reasons set forth in the preamble, 7 CFR part 52 is amended as follows:

PART 52—[AMENDED]

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**.

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

Authority: 7 U.S.C. 1621–1627.

§ 52.42 [Amended]

■ 2. In § 52.42, the figure “\$47.00” is revised to read “\$52.00”.

§ 52.50 [Amended]

■ 3. In § 52.50, the figure “\$47.00” is revised to read “\$52.00”.

§ 52.51 [Amended]

■ 4. In § 52.51, paragraph (c)(1), the figure “\$36.00” is revised to read “\$39.00”, in paragraph (c)(2), the figure “\$48.00” is revised to read “\$52.00”, and in paragraph (d)(1), the figure “\$48.00” is revised to read “\$52.00”.

Dated: October 27, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–27412 Filed 10–29–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 1910

Implementation of Low-Documentation Direct Operating Loan (Lo-Doc) Regulations

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 1900 to 1939, revised as of January 1, 2003, in § 1910.4, redesignate the second paragraph (i) as paragraph (j).

[FR Doc. 03–55528 Filed 10–29–03; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AH26

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, and –61BT Revision; Withdrawal of Direct Final Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have revised the Transnuclear, Inc. (TN) Standardized NUHOMS®–24P, –52B, and –61BT cask system listing within the “List of Approved Spent Fuel Storage Casks” to include Amendment No. 5 to the Certificate of Compliance. The NRC is taking this action because it has received significant adverse comments in response to an identical

proposed rule which was concurrently published with the direct final rule.

FOR FURTHER INFORMATION CONTACT:

Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6219 (e-mail: jmm2@nrc.gov).

SUPPLEMENTARY INFORMATION: On August 19, 2003 (68 FR 49683), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72.214 to revise the Transnuclear, Inc. (TN) Standardized NUHOMS®-24P, -52B, and -61BT cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 5 to the Certificate of Compliance. Amendment No. 5 would have modified the present cask system design to add another dry shielded canister (DSC), designated NUHOMS®-32PT DSC, to the authorized contents of the Standardized NUHOMS®-24P, -52B, and -61BT cask system. This canister is designed to accommodate 32 pressurized water reactor assemblies with or without Burnable Poison Rod assemblies. It is designed for use with the existing NUHOMS® Horizontal Storage Module and NUHOMS® Transfer Cask under a general license. The direct final rule was to become effective on November 3, 2003. The NRC also concurrently published an identical proposed rule on August 19, 2003 (68 FR 49726).

In the August 19, 2003, direct final rule, NRC stated that if any significant adverse comments were received, a timely notice of withdrawal of the direct final rule would be published in the **Federal Register**. As a result, the direct final rule would not take effect.

The NRC received significant adverse comment on the direct final rule; therefore, the NRC is withdrawing the direct final rule. As stated in the August 19, 2003, direct final rule, NRC will address the comments received on the August 19, 2003, companion proposed rule in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Dated at Rockville, Maryland, this 21st day of October, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03-27330 Filed 10-29-03; 8:45 am]

BILLING CODE 7590-01-P

**NATIONAL CREDIT UNION
ADMINISTRATION**

12 CFR Part 709

**Interpretive Ruling and Policy
Statement No. 03-3; Qualified
Financial Contracts**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of interpretive ruling and policy statement No. 03-3.

SUMMARY: Interpretive Ruling and Policy Statement (IRPS) No. 03-3 provides guidance on NCUA's treatment of qualified financial contracts (QFCs) and federal funds (fed funds) transactions if NCUA becomes liquidating agent or conservator of a credit union. The guidance covers the timing, form, authority, and maintenance of written agreements documenting QFC and fed funds transactions.

DATES: This IRPS will become effective October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Program Officer, Office of Examination and Insurance, at (703) 518-6360; or Paul Peterson, Staff Attorney, Office of General Counsel, at (703) 518-6540.

SUPPLEMENTARY INFORMATION: Qualified financial contracts are defined by the Federal Credit Union Act (Act) as any securities contract, forward contract, repurchase agreement, and any similar agreement the NCUA Board (Board) determines by regulation. 12 U.S.C. 1787(c)(8)(D). The Board designated swap agreements (swaps) as QFCs effective June 30, 2003. 68 FR 32355 (May 30, 2003).

The Act provides that any agreement purporting to form the basis of a claim against the liquidating agent or the NCUA Board must be in writing and executed contemporaneously with the acquisition of the asset by the credit union, be approved by the credit union's board, and be maintained continuously as an official record of the credit union. 12 U.S.C. 1787(b)(9), 1788(a)(3). Standard market practices for the creation and documentation of QFC and federal funds (fed funds) transactions, however, are often relatively informal. Representatives of potential QFC and fed funds counterparties have expressed concern to NCUA about how it might interpret the Act's formality requirements in the event of a credit union liquidation or conservatorship.

The Federal Deposit Insurance Corporation (FDIC) has previously adopted policy guidance that addresses counterparty concerns about similar

formality provisions in the Federal Deposit Insurance Act applicable to bank transactions. FDIC Statement of Policy on Qualified Financial Contracts, December 12, 1989, at <http://www.fdic.gov/regulations/laws/rules/5000-1100.html>. This IRPS adopts a similar policy on the formality provisions in the Federal Credit Union Act as applied to credit union transactions.

**Interpretive Ruling and Policy
Statement No. 03-3—Qualified
Financial Contracts**

This Interpretive Ruling and Policy Statement ("IRPS") provides guidance to the financial markets with regard to the treatment of qualified financial contracts (QFCs) in the event NCUA is appointed liquidating agent or conservator of a credit union. The guidance covers the timing, form, authority, and maintenance of written agreements documenting QFCs and provides a safe harbor for bona fide transactions between credit unions and nonaffiliated counterparties. For purposes of the requirements set out in sections 207(b)(9) and 208(a)(3) of the Federal Credit Union Act (the Act), the Board intends that this policy statement apply to federal funds (fed funds) transactions as well as QFCs. 12 U.S.C. 1787(b)(9) and 1788(a)(3).

The NCUA Board specifically intends that counterparties to QFCs and fed funds transactions may rely on this policy statement. The NCUA Board does not, however, intend to provide in this policy statement any indication or guidance of the treatment by a liquidating agent or conservator of any other type of contract other than fed funds or those specifically defined as QFCs in the Act or by the Board pursuant to the Act. Also, nothing in this policy statement is intended to apply to transactions between a credit union and a counterparty that is an affiliate of the credit union.

This policy statement will be effective unless revoked or otherwise withdrawn upon 45 days notice provided in the **Federal Register**. Any such revocation or withdrawal will only operate prospectively.

Written Agreement Requirements

Any QFC (including any ancillary agreements, such as a master agreement or security arrangements) that complies with the following criteria will be deemed to satisfy the requirements in sections 207(b)(9) and 208(a)(3) of the Act. 12 U.S.C. 1787(b)(9) and 1788(a)(3).

1. The QFC is evidenced by a writing (including a confirmation) that either is sent by the credit union to the

counterparty or by the counterparty to the credit union. In either case, the writing must be sent reasonably contemporaneously with the parties' agreement to enter into the specific QFC transaction. The writing need not be signed unless otherwise required by applicable non-insolvency law;

2. The credit union, by corporate action, was authorized under applicable non-insolvency law to enter into the QFC. A credit union will be deemed to have taken such corporate action if the counterparty has relied in good faith either on a resolution (or extract thereof) provided by the credit union's board of director's secretary or on a written representation (whether in a master agreement or otherwise) from an officer of the level of vice president or higher, as to the credit union's authority; and

3. The writing (or a copy thereof) evidencing the QFC and the evidence of authority must be maintained by the credit union in its official books and records. However, the counterparty may, by appropriate evidence (including the production of copies maintained by the counterparty) establish the existence of the writing and the evidence of authority.

The NCUA will apply the above criteria and the Act's requirements in a manner generally consistent with reasonable business trading practices in the QFC markets, in view of Congress's recognition in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) of the important role QFCs play in providing liquidity and portfolio and risk management to depository institutions. Without limiting the criteria set forth above, NCUA will look to the totality of the circumstances surrounding such transactions including the counterparty's good faith attempt to comply with all reasonable trading practices and requirements, any non-insolvency law requirements, and the requirements stated herein.

By the National Credit Union Administration Board on October 23, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03-27311 Filed 10-29-03; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 792

Freedom of Information Act; Implementation

AGENCY: National Credit Union Administration (NCUA).

ACTION: Direct final rule with request for comments.

SUMMARY: NCUA is amending its regulation implementing the Freedom of Information Act (FOIA) to reflect changes in its internal procedures for responding to FOIA requests and to provide the public with notice of the cut-off date used by the agency when searching for records responsive to FOIA requests.

DATES: *Effective Date:* This rule is effective December 29, 2003, without further action, unless adverse comment is received by December 1, 2003. If NCUA receives adverse comments, it will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Fax comments to (703) 518-6319. E-mail comments to regcomments@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT:

Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION: NCUA is changing its FOIA regulation, which establishes agency procedures for requesting access to NCUA records, to provide for centralized processing of FOIA requests. Previously, the rule instructed the public to submit FOIA requests to one of nine offices where they believed the records were located. This de-centralized system required FOIA requesters, some of whom were not familiar with NCUA record keeping practices, to determine where NCUA stored records. Now, the rule provides for just two offices where the public can choose to direct their FOIA requests. If requesters seek records of the Office of Inspector General (OIG), they will submit a request to the OIG. If requesters seek any other type of NCUA record, they will submit a single request to the Central Office, which will search all relevant offices for the records.

The rule also instructs FOIA requesters who are interested in receiving their FOIA responses by electronic mail (e-mail) to include their e-mail address with their requests. This will enable NCUA to process FOIA requests more efficiently and provide more timely FOIA responses.

Finally, the rule provides the public with notice of NCUA's policy concerning the search cut-off date for records responsive to a FOIA request.

The U.S. Department of Justice (DOJ), which provides guidance to agencies throughout the federal government on FOIA compliance, recommends that agencies use the date they begin to search for responsive records as the cut-off beyond which no later records are considered within the scope of the request. *Freedom of Information Guide and Privacy Act Overview*, U.S. Department of Justice, May 2002, p. 47. Although in some cases, for administrative reasons, agencies may use another search cut-off date, such as the date of the request, recent case law establishes a general rule that agencies should include all records in existence as of the date the search begins. *Public Citizen v. U.S. Department of State*, 276 F. 3d 634 (D.C. Cir. 2002).

In determining what records are responsive to a FOIA request, NCUA has generally used the date it begins its search as a search cut-off date. The NCUA Board (the Board) finds that standard to be most reasonable. The Board also recognizes that in some cases there may be a good reason, such as administrative efficiency, for using a different search cut-off date. This rule, then, provides that NCUA will generally use the date it begins its search as the search cut-off date. If it uses another date, it will advise the FOIA requester.

Under the Administrative Procedures Act (APA), an agency need not comply with the notice and comment procedures for rulemaking when the rule involved is one of agency organization, procedure, or practice. 5 U.S.C. 553(b)(3)(A). These revisions to NCUA's FOIA regulation deal with internal agency practices and policies for receiving and processing FOIA requests. Accordingly, the Board finds that, under the APA, it is unnecessary to solicit public comment before making the rule effective. 5 U.S.C. 553(b)(3)(A). In an effort to provide the public with full opportunity to participate in this change to NCUA's rules, however, the Board has determined to publish this rule as a direct final rule and accept public comments for a period of 30 days prior to the effective date. The Board encourages interested parties to submit comments. If NCUA does not receive adverse comments, the rule becomes effective on the date noted above.

Regulatory Procedures

Paperwork Reduction Act

This regulation will impose no additional information collection, reporting or recordkeeping requirements.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), NCUA certifies that this rule will not have a significant economic impact on a substantial number of small entities. NCUA expects that this rule will not: (1) have significant secondary or incidental effects on a substantial number of small entities; or (2) create any additional burden on small entities. These conclusions are based on the fact that the revised regulations are minor procedural changes intended to simplify agency record access and disclosure procedures. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12612

The NCUA Board has determined that this regulation will not have a substantial direct effect on the States, on the relationship between the national government and the States, or in the distribution of power and responsibilities between the various levels of government.

Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget is reviewing this rule to determine that it is not major for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the revisions are understandable and minimally intrusive.

List of Subjects in 12 CFR Part 792

Confidential business information, Freedom of information, Government employees.

By the National Credit Union Administration Board on October 23, 2003.

Becky Baker,

Secretary of the Board.

■ For the reasons set forth in the preamble, NCUA amends subpart A of 12 CFR part 792 as follows:

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

Subpart A—The Freedom of Information Act

■ 1. The authority citation for part 792 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C. 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p.333.

■ 2. Revise § 792.07 to read as follows:

§ 792.07 Where do I send my request?

(a) You must send your request to one of NCUA's Information Centers. The Central Office and Office of Inspector General are designated as Information Centers for the NCUA. The Freedom of Information Officer of the Office of General Counsel is responsible for the operation of the Information Center maintained at the Central Office. The Inspector General is responsible for the operation of the Inspector General Information Center.

(b) If you are seeking any NCUA record, other than those maintained by the Office of Inspector General, you should send your request to the Freedom of Information Officer at NCUA, Office of the General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may also send your request by electronic mail to FOIA@NCUA.gov.

(c) If you are seeking a record you think may be maintained by the NCUA Office of Inspector General, then you should send your request to the Inspector General, NCUA, 1775 Duke Street, Alexandria, Virginia 22314–3428.

■ 3. Amend § 792.08 by revising paragraph (a) to read as follows:

§ 792.08 What must I include in my request?

* * * * *

(a) Your name, address and telephone number where you can be reached during normal business hours. If you would like us to respond to your FOIA request by electronic mail (e-mail), you should include your e-mail address.

* * * * *

■ 4. Amend § 792.10 by adding paragraph (f) to read as follows:

§ 792.10 What will NCUA do with my request?

* * * * *

(f) The Information Center will search for records responsive to your request and will generally include all records in existence at the time the search begins. If we use a different search cut-off date, we will inform you of that date.

■ 5. Amend § 792.14 by revising the first sentence and adding a sentence after the first sentence to read as follows:

§ 792.14 Who is responsible for responding to my request?

The Freedom of Information Officer or designee is responsible for making the initial determination whether to grant or deny a request for information submitted to the Central Office Information Center. The Inspector General or designee is responsible for making the initial determination whether to grant or deny a request for information submitted to the Inspector General Information Center. * * *

■ 6. Amend § 792.28 by revising the third sentence of the introductory text to read as follows:

§ 792.28 What if I am not satisfied with the response I receive?

* * * * *

In its response to your initial request, the Freedom of Information Act Officer or the Inspector General (or designee), will notify you that you may appeal any adverse determination to the Office of General Counsel. * * *

[FR Doc. 03–27310 Filed 10–29–03; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–42–AD; Amendment 39–13349; AD 2003–22–02]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Trent 556–61 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Rolls-Royce (RR) plc RB211 Trent 556–61 turbofan engines. This AD requires a gauge inspection of the space between the high pressure (HP) fuel tubes adaptor face and seals, and a gauge inspection of the space between the fuel flow transmitter and seals, for evidence of permanent distortion of the face of the fuel tube connecting flanges, and replacement of parts if necessary. This AD is prompted by a report of fuel leaking from the engine fan cowl during an aircraft taxi. We are issuing this AD to prevent in-flight fuel leaks, which could result in an engine fire.

DATES: Effective November 14, 2003. The Director of the Federal Register approved the incorporation by reference

of certain publications listed in the regulations as of November 14, 2003.

We must receive any comments on this AD by December 29, 2003.

ADDRESSES:

Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-NE-42-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

- By fax: (781) 238-7055.

- By e-mail: 9-ane-adcomment@faa.gov.

You can get the service information referenced in this AD from Rolls-Royce plc, P.O. Box 31, Derby, England, DE248BJ; telephone: 011-44-1332-242424; fax: 011-44-1332-249936.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (781) 238-7176; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority, (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified the FAA that an unsafe condition may exist on all RR plc RB211 Trent 556-61 engines with serial numbers (SNs) before 71125, except for those SNs that are listed in Table 1 of this AD. The CAA advises that fuel was observed running from the engine fan cowl doors during an aircraft taxi. Further investigation revealed the source of the fuel leak to be permanent distortion of the face of the fuel tube connecting flanges at the fuel flow meter resulting in a significant fuel leak, which could result in an engine fire. The CAA also advises that the distortion of the flange is not aggravated by service use, but by exposure to fuel pressures that extrudes the seal through the gap between the flanges.

Relevant Service Information

We have reviewed and approved the technical contents of RR plc Alert Service Bulletin (ASB) RB.211-73-AE200, dated July 11, 2003, that describes procedures for the following:

- Gauge inspection of the space between the HP fuel tubes adaptor face and the seals, and replacement of the seal gasket and tube, if necessary; and
- Gauge inspection of the space between the fuel flow transmitter and the seals, and replacement of the seal gasket and tube, if necessary.

The CAA classified this service bulletin as alert and issued AD G-2003-0001, dated July 15, 2003, in order to ensure the airworthiness of these RR plc engines in the U.K.

Bilateral Airworthiness Agreement

This engine model is manufactured in the U.K. and is 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. Under this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the findings of the CAA, 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.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other RR plc Trent 556-61 engines of the same type design. We are issuing this AD to prevent in-flight fuel leaks, which could result in an engine fire. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in

each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003-NE-42-AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at <http://www.faa.gov/language> and <http://www.plainlanguage.gov>.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that the 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. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003-NE-42-AD" in your request.

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. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003-22-02 Rolls-Royce plc: Amendment 39-13349. Docket No. 2003-NE-42-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 14, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Rolls-Royce plc (RR) RB211 Trent 556-61 engines with serial numbers (SNs) before 71125, except for those SNs that are listed in the following Table 1 of this AD.

TABLE 1.—ENGINE SNS NOT AFFECTED BY THIS AD

71001	71003	71006	71012	71013
71015	71016	71017	71020	71021
71022	71023	71032	71037	71053
71060	71064	71068	71069	71070
71072	71073	71074	71076	71077
71078	71079	71080	71083	71084
71085	71086	71087	71088	71089
71090	71091	71092	71093	71094
71095	70196	71097	71098	71099
71100	71101	71102	71104	71105
71106	71107	71108	71109	71110
71111	71112	71113	71114	71115
71116	71117	71118	71120	71121
71122	71123			

These engines are installed on, but not limited to, Airbus A340 airplanes.

Unsafe Condition

(d) This AD is prompted by a report of fuel leaking from the engine fan cowl during an aircraft taxi. We are issuing this AD to prevent in-flight fuel leaks, which could result in an engine fire.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Credit for Previous Compliance

(f) For engines that have incorporated RR Alert Service Bulletin (ASB) No. RB.211-73-AE200, dated July 11, 2003, no further action is required.

One-Time Gauge Inspections

(g) Before further flight, gauge inspect the space between the high pressure (HP) fuel tubes adaptor face and seals and the space between the fuel flow transmitter and the seals for evidence of permanent distortion of the face of the fuel tube connecting flanges, and replace parts if necessary. Use paragraphs 3.A. through 3.B. of the Accomplishment Instructions of RR ASB No. RB.211-73-AE200, dated July 11, 2003, to do the inspections and parts replacements.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(i) You must use Rolls-Royce plc ASB No. RB.211-73-AE200, dated July 11, 2003, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce plc, P.O. Box 31, Derby, England, DE24 8BJ; telephone: 011-44-1332-242424; fax: 011-44-1332-249936. You may review copies at the Federal Aviation Administration, New England Executive Park, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Related Information

(j) CAA airworthiness directive G-2003-0001, dated July 15, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on October 20, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03-27152 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-NE-37-AD; Amendment 39-13350; AD 2003-22-03]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce plc Trent 768-60 and Trent 772-60 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Rolls-Royce plc (RR) RB211 Trent 768-60 and Trent 772-60 turbofan engines. This AD requires reworking the low

pressure (LP) turbine nozzle vane case, the LP turbine bearing support exhaust case, and the support arm bracket assemblies. This AD is prompted by a report of an LP stage 4 blade failure at the blade shank, resulting in severe radial distortion of the rear flange of the LP turbine case and failure of a number of attaching bolts, resulting in enough flange separation to allow the release of high energy debris. We are issuing this AD to prevent possible uncontained LP turbine case failure and damage to the airplane.

DATES: Effective November 14, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 14, 2003.

We must receive any comments on this AD by December 29, 2003.

ADDRESSES:

Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-NE-37-AD, 12 New England Executive Park, Burlington, MA 01803-5299.
- By fax: (781) 238-7055.
- By e-mail: 9-ane-adcomment@faa.gov.

You can get the service information referenced in this AD from Rolls-Royce plc, P.O. Box 31, Derby, England, DE248BJ; telephone: 011-44-1332-242424; fax: 011-44-1332-245418.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (781) 238-7176; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority, (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified the FAA that an unsafe condition may exist on RR RB211 Trent 768-60 engines with serial numbers (SNs) before SN 41056 and RB211 Trent 772-60 engines with SNs before SN 41056. The CAA advises that an LP turbine stage 4 blade failed during a development test. Examination

of the LP turbine case and attaching bolts, which had been subjected to the stage 4 blade failure at the shank, showed severe radial distortion of the rear flange and a number of bolts which had failed in shear or a combination of shear and tension. The initial distortion and flange separation occurred locally at the blade impact point and allowed debris to become trapped between the flanges. This debris then contacted with the remaining rotating blades resulting in enough flange separation to allow release of high-energy debris.

Relevant Service Information

We have reviewed and approved the technical contents of RR Mandatory Service Bulletin (MSB) No. RB.211-72-C224, Revision 4, dated April 12, 2002, that describes the procedures for reworking the LP turbine nozzle vane case, the LP turbine bearing support exhaust case, and the support arm bracket assemblies. The CAA classified this service bulletin as mandatory and issued AD 010-03-99, dated April 12, 2002, in order to ensure the airworthiness of these RR plc engines in the U.K.

Bilateral Airworthiness Agreement

This engine model is manufactured in the U.K. and is 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. Under this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the findings of the CAA, 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.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other RR Trent 768-60 and Trent 772-60 engines of the same type design. We are issuing this AD to prevent possible uncontained LP turbine case failure and damage to the airplane. This AD requires reworking the LP turbine nozzle vane case, the LP turbine bearing support exhaust case, and the support arm bracket assemblies. You must use the service information described

previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003-NE-37-AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at <http://>

www.faa.gov/language and <http://www.plainlanguage.gov>.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that the 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. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003-NE-37-AD" in your request.

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. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003-22-03 Rolls-Royce plc: Amendment 39-13350. Docket No. 2003-NE-37-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 14, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211 Trent 768-60 turbofan engines with serial numbers (SNs) before SN 41056 and RB211 Trent 772-60 turbofan engines with SNs before SN 41056. These engines are installed on, but not limited to, Airbus A330 series airplanes.

Unsafe Condition

(d) This AD is prompted by a report of a low pressure (LP) stage 4 blade failure at the blade shank, resulting in severe radial distortion of the rear flange of the LP turbine case and failure of a number of attaching bolts, resulting in enough flange separation to allow the release of high energy debris. We are issuing this AD to prevent possible uncontained LP turbine case failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within 15 months after the effective date of this AD, unless the actions have already been done.

Rework of Affected Components

(f) Rework the LP turbine nozzle vane case, part numbers (P/Ns) FK19488 and FK22687.

Use Accomplishment Instruction paragraph 3.B. of RR Mandatory Service Bulletin (MSB) No. RB.211-72-C224, Revision 4, dated April 12, 2002.

(g) Rework the LP turbine bearing support exhaust case, P/N FK22791. Use Accomplishment Instruction paragraph 3.C. of RR MSB No. RB.211-72-C224, Revision 4, dated April 12, 2002.

(h) Rework the support arm bracket assembly, P/N FK29121. Use Accomplishment Instruction paragraph 3.D. of RR MSB No. RB.211-72-C224, Revision 4, dated April 12, 2002.

Conditions for Installation

(i) Reworked components identified in paragraphs (f), (g), and (h) of this AD must be installed as a complete set only.

(j) Information on interchangeability of parts can be found in section 1.M. of RR MSB RB.211-72-C224, Revision 4, dated April 12, 2002.

(k) After the effective date of this AD, do not install any modules marked M08821AA, M08821AB, or core engines TRENT121AA, or TRENT122AA into any engine.

Alternative Methods of Compliance

(l) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(m) You must use the service information specified in Table 1 to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce plc, P.O. Box 31, Derby, England, DE248BJ; telephone: 011-44-1332-242424; fax: 011-44-1332-245418. You may review copies at Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Table 1 follows:

TABLE 1.—INCORPORATION BY REFERENCE

Service bulletin No.	Page	Revision	Date
Rolls-Royce plc Mandatory Service Bulletin RB.211-72-C224	1	14	April 12, 2002.
	2-3	3	September 12, 2001.
	4-7	4	April 12, 2002.
	8-9	3	September 12, 2001.
	10-14	4	April 12, 2002.
	15-16	3	September 12, 2001.
	17	4	April 12, 2002.
	18-36	3	September 12, 2001.
Total Pages: 36.			

Related Information

(n) CAA airworthiness directive 010-03-99, dated April 12, 2002, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on October 20, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate,
Aircraft Certification Service.

[FR Doc. 03-27153 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission****18 CFR Parts 4, 5, 9, and 16**

[Docket No. RM02-16-000]

**Hydroelectric Licensing Under the
Federal Power Act; Correction**

AGENCY: Federal Energy Regulatory
Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy
Regulatory Commission is correcting the
final rule concerning the process for
hydroelectric licensing under the
Federal Power Act that was published
on August 25, 2003.

EFFECTIVE DATE: October 24, 2003.

FOR FURTHER INFORMATION CONTACT: John
Clements, 202-502-8070.

SUPPLEMENTARY INFORMATION:

■ The final rule published on August 25,
2003 at 68 FR 51070 is corrected as
follows:

**PART 4—LICENSES, PERMITS,
EXEMPTIONS, AND DETERMINATION
OF PROJECT COSTS****§ 4.32 [Corrected]**

■ 1. On page 51115, in the third column,
in the amendment to § 4.32, Instructions
b. through d. are redesignated as
Instructions c. through e., and a new
Instruction b. is added to read as follows:

■ b. In paragraph (a)(5)(vi), remove the
reference “§ 16.7” and add in its place
the reference “§ 16.11”.

■ 2. On page 51115, in the third column,
in the amendment to § 4.32, redesignated
instruction 6.e. is corrected to read as
follows:

■ e. In paragraph (h), remove “Division
of Project Management” and add
“Division of Hydropower “Environment
and Engineering” in its place.

3. On page 51116, in the first column,
in the text of § 4.32(b)(2), in the second
sentence, following the word
“application”, add the following phrase:
“on the Director of the Commission’s

Regional Office for the appropriate
region and”.

§ 4.34 [Corrected]

4. On page 51116, in the second
column, in the text of § 4.34(b)(5),
paragraphs (b)(5)(ii) and (b)(5)(iii) are
correctly designated as paragraphs
(b)(5)(iii) and (b)(5)(iv) respectively, and
a new paragraph (b)(5)(ii) is added to
read as follows:

* * * * *

(ii) In the case of an application
process using the alternative procedures
of paragraph 4.34(i), the filing
requirement of paragraph (b)(5)(i) shall
apply upon issuance of notice the
Commission has accepted the
application as provided for in paragraph
4.32(d) of this part.

* * * * *

§ 4.38 [Corrected]

■ 5. On page 51117, in the third column,
instruction 11.m. amending § 4.38(g)(1)
is removed (this instruction is a
duplicate of instruction 11.l.)

6. On page 51117, in the third
column, in the text of § 4.38(a)(4), add
the phrase “Office of” before the phrase
“Energy Projects”.

7. On page 51117, in the third
column, in the text of § 4.38(b), remove
the first occurrence of the reference
“§ 5.6” and add in its place “§ 5.5”.

§ 4.39 [Corrected]

8. On page 51119, in the second
column, in the text of § 4.39(a), remove
the sentence “Two duplicates must be
made on sheets of each original.”

9. On page 51119, in the third
column, in the text of § 4.39(a), add the
sentence “Potential applicants or
licensees may be required to file maps
or drawings in electronic format as
directed by the Commission.” to the end
of the paragraph.

§ 4.41 [Corrected]

10. On page 51120, in the first
column, the text of § 4.41(h),
introductory text, is corrected as
follows:

a. In the second sentence, following
the phrase “In addition,” remove the
phrase “each exhibit G boundary map
must be submitted” and add in its place
“to the other components of Exhibit G,
the Applicant must provide the project
boundary data”.

b. In the third sentence, remove the
phrase “boundary map” and add in its
place the phrase “boundary data”, and
remove the phrase “+ 40” and add in its
place the phrase “+ 40”.

c. Remove the fourth sentence,
beginning with the phrase “Three
copies” and add in its place the

following sentence: “Three sets of the
maps must be submitted on compact
disk or other appropriate electronic
media.”

§ 4.51 [Corrected]

11. On page 51120, in the second
column, the text of § 4.51(e)(7) is
corrected to read as follows:

(7) An estimate of the cost to develop
the license application;

§ 4.61 [Corrected]

12. On page 51120, in the third
column, in the text of § 4.61(c)(4),
remove the phrase “project which” and
add in its place the phrase “projects
which”.

§ 4.70 [Corrected]

■ 13. On page 51120, in the third
column, in the amendment to § 4.70,
instruction 18 is corrected to read as
follows:

■ 18. In § 4.70, remove the phrase “or
other hydroelectric project authorized by
Congress”.

**PART 5—INTEGRATED LICENSE
APPLICATION PROCESS****§ 5.1 [Corrected]**

14. On page 51121, in the third
column, the text of § 5.1(d)(1), remove
the references “§ 5.2” and “§ 5.3” and
add in their places the references
“§ 5.5” and “§ 5.6”, respectively.

§ 5.3 [Corrected]

15. On page 51122, in the third
column, in the text of § 5.3(c)(1)(ii)(F),
remove the word “commenter” and add
in its place the word “applicant.”

§ 5.7 [Corrected]

16. On page 51127, in the first
column, in the text of § 5.7, remove the
word “issuance” and add in its place
the word “filing”.

§ 5.9 [Corrected]

17. On page 51128, in the second
column, in the text of § 5.9(c), remove
the phrase “incur and set” and add in
its place the phrase “incur in order to
set”.

§ 5.15 [Corrected]

18. On page 51130, in the first
column, in the text of § 5.15(c)(7),
remove the number “15” and add in its
place the number “30”.

19. On page 51130, in the second
column, in the text of § 5.15(f), remove
the reference to paragraphs “(c)(4)–(7)”
and add in its place “(c)(2)–(7)”.

§ 5.18 [Corrected]

20. On page 51131, in the second
column, in the text of § 5.18(a)(3)(i)(A),
remove the phrase “owner or record”

and add in its place the phrase "owner of record".

§ 5.19 [Corrected]

21. On page 51135, in the third column, in the text of § 5.19(d), remove the word "publishing" and add in its place the word "publish".

§ 5.20 [Corrected]

22. On page 51136, in the first column, in the text of § 5.20(b)(2), paragraph (b)(2)(iii) is redesignated as paragraph (b)(3).

§ 5.22 [Corrected]

23. On page 51136, in the second column, in the text of § 5.22(a), introductory text, the word "filing" is removed.

24. On page 51136, in the second column, in the text of § 5.22(a)(1), remove the phrase "or § 5.21;" and add in its place the phrase "or § 5.21);".

§ 5.24 [Corrected]

25. On page 51137, in the first column, in the text of § 5.24(c), remove the phrase "and should" and add in its place the phrase "as should".

§ 5.27 [Corrected]

26. On page 51138, in the first column, in the text of § 5.27(d), remove the reference "§ 5.23" and add in its place the reference "§ 5.22".

§ 5.28 [Corrected]

27. On page 51138, in the second column, in the text of § 5.28(c), remove the phrase "§ 5.23" and add in its place the phrase "§ 5.22".

PART 9—TRANSFER OF LICENSE OR LEASE OF PROJECT PROPERTY

§ 9.10 [Corrected]

28. On page 51139, in the second column, above instruction 29, correct the section heading to read: "§ 9.10 [Amended)".

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

§ 16.8 [Corrected]

■ 29. On pages 51140–141, in the third column of page 51140 and the first column of page 51141, in the amendment to § 16.8, redesignate Instructions h. through p. as Instructions i. through q., respectively, and add after Instruction g. the following instruction:

■ h. In paragraph (c)(2), remove the reference "(b)(4)(i)–(vi)" and add in its place the reference "(b)(5)(i)–(vi)."

30. On page 51141, in the first column, the text of § 16.8(b)(2) add after the word "exemption" the following phrase: "or a potential applicant which

elects to use the licensing procedures of Parts 4 or 16 of this chapter prior to July 23, 2005;".

31. On page 51143, in the first column, in the note preceding Appendix A, "will appear" is corrected to read "will not appear".

Dated: October 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–27405 Filed 10–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 2003P–0450]

Medical Devices; Immunology and Microbiology Devices; Classification of the West Nile Virus IgM Capture Elisa Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the West Nile Virus IgM Capture Elisa assay into class II (special controls). The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document that will serve as the special control for the device.

DATES: This rule is effective December 1, 2003.

FOR FURTHER INFORMATION CONTACT: Sally Hojvat, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of

enactment of the amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after issuing an order classifying the device, FDA must publish a notice in the **Federal Register** announcing the classification.

On July 3, 2003, FDA received a petition submitted under section 513(f)(2) of the act by PANBIO, Ltd. seeking an evaluation of the automatic class III designation of its West Nile Virus IgM Capture Elisa Assay. In accordance with section 513(f)(1) of the act, FDA issued an order automatically classifying the West Nile Virus IgM Capture Elisa Assay in class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or II. After reviewing information submitted in the petition, FDA determined that the West Nile Virus IgM Capture Elisa Assay can be classified in class II under the generic name, West Nile Virus, Serological Reagents, with the establishment of special controls. West Nile virus serological reagents are devices that consist of antigens and antisera for the detection of anti-West Nile virus IgM antibodies, in human serum, from individuals that have signs and symptoms consistent with viral meningitis/encephalitis. The detection aids in the clinical laboratory diagnosis

of viral meningitis/encephalitis caused by West Nile virus.

FDA has identified the risk to health associated specifically with this type of device as improper patient management. Therefore, in addition to the general controls of the act, the device is subject to a special controls guidance document entitled "Class II Special Controls Guidance Document: Serological Reagents for the Laboratory Diagnosis of West Nile Virus."

The class II special controls guidance provides information on how to meet premarket (510(k)) submission requirements for the device, including recommendations for labeling and performance studies. FDA believes that adherence to the class II special controls addresses the potential risk to health identified previously and provides a reasonable assurance of the safety and effectiveness of the device.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for West Nile virus serological reagents will need to address the issues covered in the special controls guidance document. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirement under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, the device is not exempt from the premarket notification requirements. In general, West Nile virus serological reagents are devices that consist of antigens and antisera for the detection of anti-West Nile virus IgM antibodies, in human serum, from individuals that have signs and symptoms consistent with viral meningitis/encephalitis. The detection aids in the clinical laboratory diagnosis of viral meningitis/encephalitis caused by West Nile virus.

FDA review of performance characteristics and labeling will ensure that acceptable levels of performance for both safety and effectiveness are addressed before marketing clearance. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on West Nile virus

serological reagents before marketing the device.

On July 8, 2003, FDA issued an order classifying the West Nile Virus IgM Capture Elisa assay and substantially equivalent devices of this generic type into class II under the generic name, West Nile Virus, Serological Reagents. FDA identifies this generic type of device as West Nile virus serological reagents, which are devices that consist of antigens and antisera for the detection of anti-West Nile virus IgM antibodies, in human serum, from individuals that have signs and symptoms consistent with viral meningitis/encephalitis. The detection aids in the clinical laboratory diagnosis of viral meningitis/encephalitis caused by West Nile virus.

FDA is codifying this device by adding § 866.3940. The order also identifies a special control applicable to this device, a guidance document entitled "Class II Special Controls Guidance Document: West Nile Virus Serological Assay."

II. Electronic Access

In order to receive the guidance entitled "Class II Special Controls Guidance Document: Serological Reagents for the Laboratory Diagnosis of West Nile Virus" via your fax machine, call the CDRH Facts-on-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. At the first voice prompt press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1206) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at <http://www.fda.gov/cdrh>.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) 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.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601-612) (as amended by subtitle D of the Small Business Regulatory Act of 1996 (Public Law 104-121)), and the Unfunded Mandates Reform Act of 1995 (Public 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 agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so it is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA knows of only one manufacturer of this type of device. Classification of these devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of \$100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

V. Federalism

FDA has analyzed this final 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 rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VI. Paperwork Reduction Act of 1995

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.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Section 866.3940 is added to subpart D to read as follows:

§ 866.3940 West Nile virus serological reagents.

(a) *Identification.* West Nile virus serological reagents are devices that consist of antigens and antisera for the detection of anti-West Nile virus IgM antibodies, in human serum, from individuals who have signs and symptoms consistent with viral meningitis/encephalitis. The detection aids in the clinical laboratory diagnosis of viral meningitis/encephalitis caused by West Nile virus.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance entitled "Class II Special Controls Guidance Document: Serological Reagents for the Laboratory Diagnosis of West Nile Virus." See § 866.1(e) for the availability of this guidance document.

Dated: October 8, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03-27294 Filed 10-29-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB-6; Notice No. 963]

RIN 1513-AA36

Bennett Valley Viticultural Area (2002R-009T)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision establishes the Bennett Valley viticultural area in Sonoma County, California. It is entirely within the North Coast viticultural area and predominantly in the Sonoma Valley viticultural area, except for a small overlap into the Sonoma Coast viticultural area. The Alcohol and Tobacco Tax and Trade Bureau believes the use of viticultural area names as appellations of origin in wine labeling and advertising helps consumers identify the wines they may purchase. It also allows wineries to better designate the specific grape-growing area in which their wine grapes were grown.

EFFECTIVE DATE: December 29, 2003.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Specialist, Regulations and Procedures Division (Oregon), Alcohol and Tobacco Tax and Trade Bureau, 946 Northwest Circle Blvd., #286, Corvallis, OR 97330; telephone: 415-271-1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out the Act's provisions. The Secretary has delegated this authority to the Alcohol and Tobacco Tax and Trade Bureau (TTB).

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR part 9, American Viticultural Areas, contains the list of approved viticultural areas.

Definition

Title 27 CFR, section 4.25(e)(1), defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundary has been delineated in subpart C of part 9. The establishment of viticultural areas allows the identification of regions where a given quality, reputation, or other characteristics of the wine is essentially attributable to its geographic origin. We believe that the establishment of viticultural areas allows wineries to describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Establishment of a viticultural area is neither an approval nor endorsement by TTB of the wine produced there.

Requirements

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition TTB to establish a grape-growing region as a viticultural area. The petition must include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence that the proposed area's growing conditions, such as climate, soils, elevation, physical features, etc., distinguish it from surrounding areas;
- A description of the proposed viticultural area's specific boundaries, based on features found on maps approved by the United States Geological Survey (USGS); and
- A copy of the appropriate USGS-approved map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

With this viticultural area's establishment, bottlers who use brand names like Bennett Valley may be affected. If you fall in this category, you must ensure that your existing products are eligible to use the name of the viticultural area as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area.

If the wine is not eligible for the appellation, you must change the brand name and obtain approval of a new label. Different rules apply if you label a wine in this category with a brand name traceable to a label approved prior

to July 7, 1986. See 27 CFR 4.39(i) for details. Additionally, if you use the viticultural area name on a wine label in a context other than appellation of origin, the general prohibitions against misleading representation in part 4 of the regulations apply.

Homeland Security Act of 2002

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms, and Explosives in the Department of Justice. Regulation of alcohol beverage labels, including viticultural area designations, is the responsibility of the new TTB. References to ATF and TTB in this document reflect the time frame, before or after January 24, 2003, of the viticultural area establishment process.

Bennett Valley Petition

ATF received a petition from Matanzas Creek Winery of Santa Rosa, California, proposing a new viticultural area to be called "Bennett Valley." The 8,140-acre viticultural area currently has 650 acres of planted vineyards. It is located in Sonoma County, California, just southeast of the city of Santa Rosa and approximately 45 miles northeast of San Francisco. The Bennett Valley viticultural area is entirely within the North Coast viticultural area, is almost completely within the Sonoma Valley viticultural area, and has a small 281-acre overlap into the Sonoma Coast viticultural area to the west. It also partially overlaps the Sonoma Mountain viticultural area, which is entirely within the larger Sonoma Valley viticultural area.

The Bennett Valley viticultural area is about 5.5 miles long, northwest to southeast, 3.15 miles across at its widest point, and resembles the shape of a downward-pointing bullet. The floor of Bennett Valley runs the petitioned area's length, and Bennett Valley Road meanders from its northwest to southeast boundaries. The Bennett Valley viticultural area, including the surrounding hills and mountains, comprises the Matanzas Creek watershed. This creek flows west into the Russian River drainage system and eventually to the Pacific Ocean. Differences in topography, soils, and climate distinguish the Bennett Valley viticultural area from the surrounding areas.

Name Evidence

The area is locally known as Bennett Valley. It is named after James N. Bennett, an 1849 immigrant settler who arrived by wagon train. His arrival coincided with the 1849 Gold Rush that brought settlers to California, helping Bennett Valley grow as an agricultural region known for grapes, apples, hay, wheat, oats, barley, and livestock. The Bennett Valley Grange Hall was built in 1873 and it still stands on Grange Road in Bennett Valley, as noted on the USGS Santa Rosa quadrangle map. An excerpt from the 1877 "Historical Atlas Map of Sonoma County" states that if Bennett Valley "has any specialty, it is for fruit and grape culture."

Evidence for the current use of the Bennett Valley name includes references from a book by Don Edwards, "Making the Most of Sonoma County, A California Guide," which states, "Bennett Valley—squeezed between Taylor Mountain and the Sonoma Mountains on the west, Bennett Peak (Yulupa to the Indians) and Bennett Ridge to the east—has been ranching and farming country since the days when Missourian William Bennett settled here." The Bennett Valley Homeowner's Association's web site includes a boundary description similar to that of the Bennett Valley viticultural area. The Sonoma County telephone book has 24 business listings using the Bennett Valley name, including the Bennett Valley Union School District. The Bennett Valley School is identified on the USGS Santa Rosa quadrangle map just inside the area's northwest boundary line. The Sonoma County government's Bennett Valley Area Plan includes all but the northern-most portion of the viticultural area.

Boundary Evidence

The Bennett Valley viticultural area's boundaries are based on historical and current viticulture, the physical limits of the Matanzas Creek watershed, and the area's growing conditions, including its soil, terrain, and a unique microclimate with a strong coastal influence in a sheltered, inland location. Historically, 24 grape growers are linked with Bennett Valley agriculture. In 1862, early settler Isaac DeTurk planted a 30-acre vineyard at the base of Bennett Mountain. By 1878 he was producing 100,000 gallons of wine from his own and purchased grapes at his winery located within this viticultural area on Grange and Bennett Valley roads.

Modern accounts indicate that, around the turn of the century, phylloxera disease killed some of Bennett Valley's estimated 2,000

vineyard acres, while Prohibition ended the balance of the Valley's wine grape industry. A resurgence of wine grape growing in Bennett Valley started in 1975 when the Matanzas Creek Winery planted 20 acres of grapes, and the Valley now has approximately 650 vineyard-acres.

Physical Features

Bennett Valley is surrounded on three sides by the Sonoma Mountain Range and on the north side by the city of Santa Rosa. The mountainous boundaries, generally defined by ridgelines, indicate the outer limits of the Matanzas Creek watershed. Taylor and Bennett Mountains provide anchors for the area's western and eastern boundary, respectively, while the 1,600-foot elevation line on Sonoma Mountain defines the southern boundary. Elevations within the area range from 250 to 1,850 feet, with most vineyards between the 500- and 600-foot level.

The Bennett Valley viticultural area boundary starts at Taylor Mountain's peak and continues straight northeast, coinciding with a portion of the Sonoma Valley viticultural area boundary line. The lower northern elevations open to the Santa Rosa Valley and the city of Santa Rosa, where, at the northernmost point, the boundary line turns southeast at a 65-degree angle. The northeastern and eastern boundaries, primarily a series of straight lines connecting elevation points, follow the ridgelines through the peak of Bennett Mountain that outline the eastern side of the Matanzas Creek watershed.

The Bennett Valley area's southern boundary follows the 1,600-foot elevation line along Sonoma Mountain's north side and then a westerly straight line to a 900-foot elevation point. The southwestern boundary uses intersections and markers, within the Matanzas Creek watershed, to close the boundary line at Taylor Mountain. Crane Canyon, on the area's southwestern side, provides an opening in the mountains for the cooling coastal fogs and breezes from the Pacific coast, which moderate the Bennett Valley's climate.

Growing Conditions

Soils

The Bennett Valley viticultural area's soils vary from the surrounding areas, due to the different composition percentages of its predominant Goulding-Toomes-Guenoc Association. There are differences in the distribution of Spreckels, Laniger, Haire, and Red Hill clay loam soils between the Bennett Valley viticultural area and nearby

portions of the Sonoma Valley viticultural area. Soils in the Sonoma Mountain viticultural area, other than the overlapping portion, vary from those within the Bennett Valley area.

The foothills soils, comprised primarily of the Goulding-Toomes-Guenoc Association, are of a volcanic origin that include lava flows, tuff beds, sandstone, gravel, and some conglomerate. The lower slopes and valley floor soils have more variety, including some of alluvial origin. The distribution of Spreckels loam, a well-drained loam with clay subsoil is about 24 percent in the Bennett Valley area, 27 percent in the Sonoma Mountain viticultural area, and almost 42 percent in the common area that overlaps the two areas.

Climate

The Bennett Valley viticultural area has a unique microclimate, resulting

from its sheltered inland location and access to cooling coastal fogs and breezes. The broad and tall Sonoma Mountain diverts the foggy, south-to-north coastal breezes of the Petaluma gap to the north and into the Crane Canyon gap. This gap, between Sonoma Mountain and Taylor Mountain, funnels the coastal fog and winds east into the Bennett Valley. Rainfall amounts in the Bennett Valley area are 17 to 25 percent higher than in the areas to the immediate north and east. Valley residents indicate that rainfall amounts vary with elevation and proximity to the mountains and wind patterns.

Overlaps With the Sonoma Mountain and Sonoma Coast Viticultural Areas

The Bennett Valley area is almost entirely within the Sonoma Valley viticultural area. The Sonoma Mountain viticultural area, which is totally within

the larger Sonoma Valley viticultural area, overlaps 13.1 percent of the Bennett Valley area. A small part, 3.4 percent, of the Bennett Valley viticultural area overlaps into the Sonoma Coast viticultural area. The Sonoma Coast and the interior Sonoma Valley viticultural areas, both within the larger North Coast viticultural area, share a common boundary line along Sonoma Valley's western border. This common boundary line is the site of the boundary's small overlap into the Sonoma Coast area.

The following table summarizes the 8,140-acre Bennett Valley viticultural area's overlaps with other, established viticultural areas:

Viticultural area	Acres within the Bennett Valley area	Percent of the Bennett Valley area in overlap (percent)
Sonoma Valley only	6,796	83.5
Sonoma Mountain (within Sonoma Valley area)	1,063	13.1
Total within Sonoma Valley	7,859	96.6
Sonoma Coast	281	3.4
Grand Total	8,140	100.0

Sonoma Valley Viticultural Area (27 CFR 9.29)

The Bennett Valley viticultural area is primarily within the Sonoma Valley viticultural area. The Bennett Valley area occupies 7,859 acres, or approximately 7 percent, of the larger Sonoma Valley viticultural area's acreage. The Sonoma Valley viticultural area petition included the Bennett Valley due to its similar soil and climate. The Sonoma Mountain viticultural area is totally within, and located in the western portion of, the Sonoma Valley viticultural area.

Sonoma Mountain Viticultural Area (27 CFR 9.102)

The Bennett Valley viticultural area overlaps 1,063 acres (13.1 percent of its territory) of the Sonoma Mountain viticultural area, which is itself totally within the Sonoma Valley viticultural area. The overlap is in the southeast corner of the Bennett Valley area and the northwestern portion of the Sonoma Mountain area. The overlap is seen on the Glen Ellen and Kenwood USGS maps in Sections 11 through 14, T6N, R7W. The overlap is mainly that portion of the Bennett Valley viticultural area

north of the 1,600-foot elevation line on Sonoma Mountain in Sections 13, 14, and 23, and the land east of the common line between Sections 15 and 14, as shown on the Glen Ellen map. The northern limit of the overlap is the 800-foot elevation line from its southern most intersection with the common line between Sections 10 and 11 to its intersection with Bennett Valley Road, as shown on the Kenwood map.

The overlap area between the Bennett Valley and the Sonoma Mountain viticultural areas contains common geographic features, including the Matanzas Creek watershed, similar vineyard elevations, and the "thermal belt" phenomenon. This thermal phenomenon drains cold air and fog from the upper mountain slopes to the lower elevations, which moderates temperatures at the lower levels. The overlapping area is within the Crane Canyon wind gap range, which delivers the Pacific Ocean's cooling marine influence to the Bennett Valley area.

Strong soil similarities, within the Bennett Valley and Sonoma Mountain overlapping boundary area, include Goulding clay loam that covers 30.2 percent of the Bennett Valley area, 33.4

percent of this overlapping area, and from 7.4 to 49.8 percent of other sections of Sonoma Valley viticultural areas. Goulding cobbly clay loam covers 18.5 percent of the Bennett Valley area, 19.0 percent of the Sonoma Mountain overlap, and covers 10.8 to 43.1 percent of other areas.

Several Sonoma Mountain area grape growers state that diverse growing conditions exist on different sides, and at various elevations, on Sonoma Mountain. Specifically, they explain that the overlapping area benefits from the coastal influence and wind, which contrasts to the protected, warmer, eastern side of the mountain.

Sonoma Coast Viticultural Area (27 CFR 9.116)

The Bennett Valley viticultural area overlaps approximately 281 acres (3.4 percent of its territory) of the established Sonoma Coast viticultural area. This overlapping area is in two portions on the Bennett Valley's west boundary side. The first is located north of Crane Canyon Road and can be found in Sections 9 and 8, T6N, R7W, on the Cotati and Santa Rosa USGS maps. The second is located in Sections 15 and 16,

T6N, R7W, on the Cotati map. This section of the Sonoma Valley and Sonoma Coast viticultural areas common boundary line spans a remote section of the Sonoma Mountains, where determining the exact limits of the Matanzas Creek watershed might have challenged previous viticultural area petitioners in drawing boundary lines.

The original intent of the Bennett Valley viticultural area petitioners was to follow the Sonoma Valley area's western border and not overlap into the Sonoma Coast viticultural area. However, in the overlap north of Crane Canyon Road, the petitioners discovered that the former George N. Whitaker vineyard, a historically significant Bennett Valley vineyard, straddles the common boundary line between the Sonoma Coast and Sonoma Valley viticultural areas. The vineyard, and the immediately surrounding land, is similar to the Bennett Valley viticultural area due to its drainage into the Matanzas Creek watershed, its direct receipt of the cooling marine influence from the Crane Canyon gap, and terrain and soils that are consistent with Bennett Valley viticultural area. To avoid again dividing this vineyard between two viticultural areas, the petitioners extended their boundary line about a quarter-mile west into the Sonoma Coast viticultural area, creating the small, 281-acre overlap.

The terrain, soils, and microclimate of this Sonoma Coast overlap are consistent with the Bennett Valley viticultural area. The area is totally within the Matanzas Creek watershed and on the Sonoma Valley side of the dividing ridge. The elevations, from 680 to 960 feet, are consistent with the surrounding Bennett Valley areas. The Goulting soils predominate the overlapping area and are similar to the rest of the Bennett Valley area. The Crane Canyon gap gives this overlap area the same cooling marine influence as the rest of the Bennett Valley viticultural area.

Notice of Proposed Rulemaking

ATF published a notice of proposed rulemaking regarding the establishment of the Bennett Valley viticultural area in the November 22, 2002, **Federal Register** as Notice No. 963 (67 FR 70352). In that notice, ATF requested comments by January 21, 2003, from all interested persons. No comments were received concerning the establishment of the Bennett Valley viticultural area. Therefore, under the provisions of the Federal Alcohol Administration Act and our regulations, we accept the petition and establish the Bennett Valley

viticultural area in Sonoma County, California.

Regulatory Analyses and Notices

Paperwork Reduction Act

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

The principal author of this document is N.A. Sutton (Oregon), Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

■ For the reasons discussed in the preamble, we amend title 27, Code of Federal Regulations, part 9, American Viticultural Areas, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.142 to read as follows:

§ 9.142 Bennett Valley.

(a) *Name.* The name of the viticultural area described in this section is "Bennett Valley".

(b) *Approved maps.* The appropriate maps for determining the boundary of the Bennett Valley viticultural area are four 1:24,000 scale USGS topographic maps. They are titled:

(1) Santa Rosa Quadrangle, CA—Sonoma Co. 1994

(2) Kenwood Quadrangle, CA 1954, photorevised 1980

(3) Glen Ellen Quadrangle, CA—Sonoma Co. 1954, photorevised 1980

(4) Cotati Quadrangle, CA—Sonoma Co. 1954, photorevised 1980

(c) *Boundary.* The Bennett Valley viticultural area is entirely within Sonoma County, California, and is located northwest of the peak of Sonoma Mountain and southeast of the city of Santa Rosa.

(1) Beginning at the peak of Taylor Mountain (BM 1401), Section 6, T6N, R7W, proceed straight northeast to the intersection of the common line between Sections 31 and 32 and the 560-foot elevation line, T7N, R7W; continue straight northeast at the same angle, crossing the Bennett Valley Golf Course and Matanzas Creek, to a point on the 500-foot elevation line approximately 400 feet north of the southern boundary of Section 20, T7N, R7W (Santa Rosa Quadrangle); then

(2) Proceed straight southeast to the center peak of the three unnamed peaks above the 1,100-foot elevation line, located approximately 1,600 feet southwest of Hunter Spring, in Section 28, T7N, R7W (Santa Rosa Quadrangle); then

(3) Proceed straight east-southeast to a 1,527-foot peak in the southeast corner of Section 28, T7N, R7W (Santa Rosa Quadrangle); then

(4) Proceed straight southeast to Bennett Mountain's 1,887-foot peak, Section 34, T7N, R7W (Kenwood Quadrangle); then

(5) Proceed straight southeast to the 1,309-foot peak located northwest of a water tank and approximately 400 feet north of the southern boundary of Section 35, T7N, R7W (Kenwood Quadrangle); then

(6) Proceed straight south-southeast to the 978-foot peak in the northeast quadrant of Section 11, T6N, R7W, and continue straight south-southeast approximately 600 feet to the "T" intersection of two unimproved roads located on the common boundary line between Sections 11 and 12, T6N, R7W (Kenwood Quadrangle); then

(7) Proceed south along the north-south unimproved road to its intersection with Sonoma Mountain Road, Section 13, T6N, R7W, and continue straight south to the 1,600-foot elevation line, Section 13, T6N, R7W (Glen Ellen Quadrangle); then

(8) Proceed west along the meandering 1,600-foot elevation line to the point where it crosses the common line between Sections 22 and 23, T6N, R7W (Glen Ellen Quadrangle); then

(9) Proceed straight west-northwest to the point where the 900-foot elevation line crosses the common line between Sections 15 and 16, T6N, R7W, approximately 500 feet north of the southwest corner of Section 15 (Cotati Quadrangle); then

(10) Proceed straight northwest to the intersection of Grange Road (known as Crane Canyon Road to the west) and the southern boundary of Section 9, and continue straight west along that section boundary to the southwest corner of Section 9, T6N, R7W (Cotati Quadrangle); then

(11) Proceed straight north-northwest to the 961-foot peak on the east side of Section 8, T6N, R7W (Santa Rosa Quadrangle); and then

(12) Proceed straight northwest to the peak of Taylor Mountain, returning to the point of beginning.

Signed: September 17, 2003.

Arthur J. Libertucci,
Administrator.

Dated: October 6, 2003.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and
Tariff Policy).

[FR Doc. 03-27316 Filed 10-29-03; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 165

[COTP Mobile-03-022]

RIN 1625-AA00

Security Zone; Bayou Casotte, Chevron Pascagoula Refinery, Pascagoula, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing all waters of Bayou Casotte east of a line drawn from position 30°19'54" N, 088°30'37" W to position 30°20'42" N, 088°30'28" W at the Chevron Pascagoula Refinery. This security zone is necessary to protect the Chevron Pascagoula refinery, persons, and vessels from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry of persons or vessels into this security zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

DATES: This rule is effective from 5 p.m. on September 24, 2003, until 5 p.m. on March 24, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Mobile-03-022] and are available for inspection or copying at Marine Safety Office Mobile, Brookley Complex, Bldg 102, South Broad Street, Mobile, AL 36615-1390 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:
Lieutenant (LT) Carolyn Beatty,
Operations Department, Marine Safety
Office Mobile, AL, at (251) 441-5771.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 5, 2003, we published a temporary final rule (TFR) entitled "Security Zone; Bayou Casotte, Pascagoula, MS" in the **Federal Register** (68 FR 23594) that expired at 5 p.m. on September 22, 2003. On July 7, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Bayou Casotte, Pascagoula, MS" in the **Federal Register** (68 FR 40231). The geographic coordinates that defined the boundary of the proposed security zone were incorrect.

We did not publish a notice of proposed rulemaking for this temporary final rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because national security and intelligence officials warn that future terrorist attacks against United States interests are likely. Current advisories of terrorist threats and the nature of the material handled at the Chevron Pascagoula refinery make this rulemaking necessary for the protection of national security interests. Any delay in making this regulation effective would be contrary to the public interest because action is necessary to protect against the possible loss of life, injury, or damage to property.

During the effective period of this temporary rule, the Coast Guard intends to publish a supplemental NPRM and provide sufficient time for public comments to be submitted. This SNPRM with corrected geographic coordinates for the proposed permanent security zone will be published in the **Federal Register** and all comments received will be considered before the Coast Guard imposes a final rule.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. The President has continued the national emergencies he declared following those attacks (68 FR 53665, Sep. 10, 2003) (continuing the emergency declared with respect to terrorist attacks); (68 FR 55189, Sep. 18, 2003) (continuing emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks (E.O. 13,273, 67 FR 56215, Sep. 3, 2002) (security of U.S. endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations). In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary.

The Captain of the Port Mobile is establishing a temporary security zone encompassing all waters of Bayou Casotte east of a line drawn from position 30°19'54" N, 088°30'37" W to position 30°20'42" N, 088°30'28" W at the Chevron Pascagoula Refinery. These coordinates are based upon [NAD 83].

This security zone is necessary to protect the Chevron Pascagoula refinery, persons, and vessels from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry of persons or vessels into this security zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone. Vessels may be permitted to enter the security zone on a case-by-case basis with permission from the Captain of the Port Mobile or a designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard is unaware of any small entities that would be impacted by this rule. The navigable channel remains open to all vessel traffic.

If you are a small business entity and are significantly affected by this regulation please contact LT Carolyn Beatty, Operations Department, Marine Safety Office Mobile, AL, at (251) 441–5771.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. Paragraph (34)(g) is applicable because this rule is establishing a security zone that will be effective for a period greater than one week.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–135 is added to read as follows:

§ 165.T08–135 Security Zone; Bayou Casotte, Chevron Pascagoula Refinery, Pascagoula, MS.

(a) *Location.* The following area is a security zone: All waters of Bayou Casotte east of a line drawn from position 30°19′54″ N, 088°30′37″ W to position 30°20′42″ N, 088°30′28″ W at the Chevron Pascagoula Refinery. These coordinates are based upon [NAD 83].

(b) *Effective period.* This section is effective from 5 p.m. on September 24, 2003, until 5 p.m. on March 24, 2004.

(c) *Regulations:* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Mobile or a designated representative.

(2) Persons or vessels desiring to transit the area of the security zone may contact the Captain of the Port Mobile at telephone number (251) 441-5121 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Mobile or a designated representative.

Dated: September 23, 2003.

Steven D. Hardy,

Captain, U.S. Coast Guard, Captain of the Port Mobile.

[FR Doc. 03-27286 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Los Angeles—Long Beach 03-011]

RIN 1625-AA00

Security Zone; Long Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone in the waters adjacent to Pier T126 in San Pedro Bay, Long Beach, CA. This action is needed to protect U.S. Naval vessels and their crew during the offloading of equipment from a Military Sealift Command (MSC) vessel at Pier T126 from sabotage, or other subversive acts, accidents, criminal actions or other causes of a similar nature. Entry, transit, or anchoring in this zone is prohibited unless authorized by the Captain of the Port (COTP) Los Angeles—Long Beach, or his designated representative.

DATES: This rule is effective from 6 a.m. on October 21, 2003, to 6 a.m. on November 21, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Los Angeles—Long Beach 03-011] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Los Angeles—Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ryan Manning, USCG, Chief of Waterways Management Division, at (310) 732-2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Final dates and other logistical details for the event were not provided to the Coast Guard in time to draft and publish an NPRM or a temporary final rule 30 days prior to the event, as the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to protect persons, vessels and others in the maritime community from the hazards associated with the offloading operations.

For the same reasons stated above, 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 United States Navy will conduct military outload operations from Long Beach Pier T126. These operations involve the offloading of equipment onboard a Military Sealift Command (MSC) vessel for the furtherance of our national security. These offload evolutions are directed at a moment's notice. In an effort to protect the offload evolution and provide adequate notice to the public, the Captain of the Port of Los Angeles—Long Beach proposes to establish a temporary security zone around the Long Beach Pier T126 which will be actively enforced when the military offload evolution occurs.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures (33 U.S.C. 1226). The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways.

In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard proposes to establish a temporary security zone in the navigable waters of the United States adjacent to the Long Beach Pier T126. The action proposed under this rule is necessary to protect U. S. Naval vessels and their crews during these military outload evolutions at Long Beach Pier T126 from sabotage, or other subversive

acts, accidents, criminal actions or other causes of a similar nature.

Discussion of Rule

Due to national security interests, the implementation of this security zone is necessary for the protection of the United States and its people. The security zone will encompass the navigable waters within 500 yards of the MSC vessel while it is moored at Long Beach T126. The size of the zone is the minimum necessary to provide adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public.

The military outload evolutions involve the transfer of military equipment from a MSC vessel to a shore side staging area. The security zone will accompany other security measures implemented at Long Beach Pier T126 waterfront facility.

Due to complex planning, national security reasons, and coordination with all military schedules, information regarding the precise location and date of the military outload will not be circulated. However, prior to the outload evolution, the public will be notified that the security zone is in effect and will be enforced actively. The notice of active enforcement of the security zone will be announced via broadcast notice to mariners, local notice to mariners, or by any other means that is deemed appropriate.

This security zone is established pursuant to the authority of the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations. Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192 which include seizure and forfeiture of the vessel, a monetary penalty of not more than \$12,500, and imprisonment for not more than 10 years.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to the zone, the effect of this regulation will not be significant because: (i) The zone will encompass only a small portion of the waterway; (ii) vessels will be able to pass safely

around the zones; and (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the U.S. Naval vessel, their crew, and the public. Accordingly, full regulatory evaluation under the regulatory policies and procedures of the DHS is unnecessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Most of the traffic in this area is recreational traffic and sightseers. The economic impact is minimized by having them gain permission to transit through the zone from the COTP or his representative. The Coast Guard has coordinated with known private business owners in an effort to reduce any substantial impact on business.

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. 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 person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation because we are establishing a security zone. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” will be 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new § 165.T11–051 to read as follows:

§ 165.T11-051 Security Zone; Waters Adjacent to Long Beach Pier T126.

(a) *Location.* The security zone consists of all waters, extending from the surface to the sea floor, within a 500-yard radius of a Military Sealift Command (MSC) vessel, while the vessel is moored at Long Beach T126.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into, transit through, or anchoring within the security zone by all vessels is prohibited during military outloads, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zone established by this section.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 1-800-221-USCG or on VHF-FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by the Long Beach Police Department.

Dated: October 20, 2003.

David P. Crowley,

Commander, U.S. Coast Guard, Acting Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 03-27285 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA284-0407a; FRL-7577-1]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent and surface cleaning operations during large appliance and metal furniture coating, miscellaneous metal parts coating, plastic parts and products coating, and marine vessel coating. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 29, 2003 without further notice, unless EPA receives adverse comments by December 1, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, or via email at steckel.andrew@epa.gov.

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

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460; California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and, Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

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

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at (415) 947-4111, or via email at wamsley.jerry@epa.gov.

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

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I. The State's Submittal**A. What Rules Did the State Submit?**

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

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
BAAQMD	8-14	Surface Preparation and Coating of Large Appliances and Metal Furniture	10/16/02	04/01/03
BAAQMD	8-19	Surface Preparation and Coating of Miscellaneous Metal Parts and Products	10/16/02	04/01/03
BAAQMD	8-31	Surface Preparation and Coating of Plastic Parts and Products	10/16/02	04/01/03
BAAQMD	8-43	Surface Preparation and Coating of Marine Vessels	10/16/02	04/01/03

On May 13, 2003, EPA made the finding that these rule submittals met the completeness criteria in 40 CFR part 51, appendix V. These criteria must be met before formal EPA review may begin.

B. Are There Other Versions of These Rules?

We approved past versions of these BAAQMD rules into the SIP on December 23, 1997 at 62 FR 66998. Between these SIP incorporations and

today, CARB has made no intervening submittals of these rules.

C. What Is the Purpose of the Submitted Rule Revisions?

The amendments to these rules added solvent cleaning provisions to each rule

along with complementary changes to the recordkeeping and test method portions of each rule. BAAQMD's amendments to these four rules included these significant changes to the version within the SIP.

- The VOC definition was updated. Also, several new definitions were added such as surface preparation, medical device, and electrical and electronic components.
- Standards for minimizing solvent evaporative loss during clean-up were added along with a requirement that clean-up solvents not exceed 50 grams/liter VOC content.
- Surface preparation standards were added along with a requirement that surface preparation solvents not exceed 50 grams/liter VOC content.
- Record keeping requirements were added for solvents used in clean-up and surface preparation.
- The test method section of the rule was amended to include the clean-up and surface preparation standards.
- A set of test methods, "Analysis of Solvent Samples" and "Analysis of Exempt Compounds" were added.

Also, BAAQMD added limited exemptions for several activities from the solvent cleaning requirements within the rules. These limited exemptions are described below and discussed in more detail later in this rulemaking.

BAAQMD Rule 8–14, Surface Preparation and Coating of Large Appliances and Metal Furniture, is a rule designed to reduce VOC emissions at industrial sites painting and coating these items. VOCs are emitted during the preparation and coating of various substrates, as well as, the drying phase of the coating process. Rule 8–14 contains general and specialty coating VOC emission limits, an abatement device efficiency requirement of 85%, solvent evaporative loss standards, and surface preparation standards. BAAQMD's amendments to Rule 8–14 included these specific limited exemptions.

- A limited exemption was added for the following: (1) Surface preparation of electrical and electronic components, precision optics, and numismatic dies; (2) stripping of cured inks, coatings, and adhesives, cleaning of resin, coating, ink and adhesive mixing, molding and application equipment; and, (3) surface preparation associated with research and development operations, performance testing of coatings, adhesives, or inks, and testing for quality control and quality assurance.

BAAQMD Rule 8–19, Surface Preparation and Coating of Miscellaneous Metal Parts and Products, is a rule designed to reduce VOC emissions at industrial sites engaged in painting and coating various metal parts and products. VOCs are emitted during the preparation and coating of various substrates, as well as, the drying phase of the coating process. Rule 8–19 contains general and specialty coating VOC emission limits, an abatement device efficiency requirement of 85%, solvent evaporative loss standards, and surface preparation standards. BAAQMD's amendments to Rule 8–19 included these specific limited exemptions.

- A limited exemption was added for the following: (1) Surface preparation of electrical and electronic components, precision optics, and numismatic dies; (2) stripping of cured inks, coatings, and adhesives, cleaning of resin, coating, ink and adhesive mixing, molding and application equipment; and, (3) surface preparation associated with research and development operations, medical devices, pharmaceutical manufacturing operations, performance testing of coatings, adhesives, or inks, and testing for quality control and quality assurance.

- A limited exemption from the standards in Section 321 was added for surface preparation of military components which are prepared under a contract that requires the use of a solvent exceeding the requirements in Section 321. Such a contract must be entered into before December 1, 2005.

BAAQMD Rule 8–31, Surface Preparation and Coating of Plastic Parts and Products, is a rule designed to reduce VOC emissions at industrial sites coating or painting plastic substrates. VOCs are emitted during the preparation and coating of various substrates, as well as, the drying phase of the coating process. Rule 8–31 contains general and specialty coating VOC emission limits, an abatement device efficiency requirement of 85%, solvent evaporative loss standards, and surface preparation standards. BAAQMD's amendments to Rule 8–31 included these specific limited exemptions.

- A limited exemption was added for the following: (1) Surface preparation of electrical and electronic components, precision optics, and numismatic dies; (2) stripping of cured inks, coatings, and adhesives, cleaning of resin, coating, ink and adhesive mixing, molding and

application equipment; and, (3) surface preparation associated with research and development operations, medical devices, pharmaceutical manufacturing operations, performance testing of coatings, adhesives, or inks, and testing for quality control and quality assurance.

- A limited exemption from the standards in Section 321 was added for surface preparation of military components which are prepared under a contract that requires the use of a solvent exceeding the requirements in Section 321. Such a contract must be entered into before December 1, 2005.

BAAQMD Rule 8–43, Surface Preparation and Coating of Marine Vessels, is a rule designed to reduce VOC emissions at industrial sites engaged in coating and painting marine vessels and associated components. VOCs are emitted during the preparation and coating of various substrates, as well as, the drying phase of the coating process. Rule 8–43 contains general and specialty coating VOC emission limits, an abatement device efficiency requirement of 85%, solvent evaporative loss standards, and surface preparation standards. BAAQMD's amendments to Rule 8–43 included these specific limited exemptions.

- A limited exemption was added for the following: (1) Surface preparation solvent used on surfaces prepared for bonding dissimilar substrates; (2) surface preparation solvent used on gears, turbines, turbine generators and associated housings with faint or working surfaces where surfaces are required to undergo material testing or application for transfer dyes; (3) electrical and electronic components; and, (4) surface preparation associated with research and development operations, medical devices, pharmaceutical manufacturing operations, and performance testing of coatings, adhesives, or inks, and testing for quality control and quality assurance.

- A limited exemption from the standards in Section 321 was added for surface preparation of military components which are prepared under a contract that requires the use of a solvent exceeding the requirements in Section 321. Such a contract must be entered into before December 1, 2005.

- Section 402, Vessels Subject to Coastwide Bid Petition was deleted.

The TSD for each subject rule has more information.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The BAAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so these rules must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following items listed below.

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

4. "Control of Volatile Organic Emissions from Existing Stationary Sources Volume III: Surface Coating of Metal Furniture," USEPA, December 1977, EPA-450/2-77-032.

5. "Control of Volatile Organic Emissions from Existing Stationary Sources Volume V: Surface Coating of Large Appliances," USEPA, December 1977, EPA-450/2-77-034.

6. "Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products," USEPA, June 1978, EPA-450/2-78-015.

7. Alternative Control Technique Document: Surface Coating of Automotive/Transportation and Business Machine Plastic Parts (EPA 453/R-94-017, 2/94).

8. "Control Techniques Guidelines (CTG) for Shipbuilding and Ship Repair Operations (Surface Coating)," USEPA, 61 **Federal Register** 44050-44057, August 27, 1996.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The emissions allowed by the limited exemptions within these rules are outweighed by the emission reductions generated by each rule. BAAQMD staff provided the following supporting rationale for the limited

exemptions: (1) Some solvent cleaning is idiosyncratic to the ink, coating, or adhesive being removed and could not be achieved without considering their formulation; (2) these surface preparation and cleaning solvents are used in very small amounts; (3) a specific clean-up solvent or surface preparation agent is either required, or has no workable substitute given the specific task at hand. Overall, these amendments to these Regulation 8 rules will result in a VOC emission reduction of 2.2 tons per day including the emission effects of the limited exemptions (note that 1.7 tons per day of these emission reductions are derived from Rule 8-4, adopted simultaneously with these other rules).

The subject TSD has more information on our evaluation each rule.

C. EPA Recommendations to Further Improve the Rules

We have no additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by December 1, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 29, 2003. This will incorporate these rules into the federally enforceable SIP. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Stationary and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the

requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 29, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 6, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(315)(i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(315) * * *

(i) * * *

(A) * * *

(2) Rule 8–14 adopted on March 7, 1979 and amended on October 16, 2002; Rule 8–19 adopted on January 9, 1980 and amended on October 16, 2002; Rule 8–31 adopted on September 7, 1983 and amended on October 16, 2002; and, Rule 8–43 adopted on November 23, 1988 and amended on October 16, 2002.

* * * * *

[FR Doc. 03–27267 Filed 10–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 196–1196a; FRL–7580–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) which limits emissions of volatile organic compounds (VOC) from lithographic printing facilities in the Kansas City, Missouri, area. This revision provides a correction and clarification to the applicability portion of the rule, and also reorganizes the rule into the state's standardized rule format. Approval of this revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the current state rules.

DATES: This direct final rule will be effective December 29, 2003, unless EPA receives adverse comments by December 1, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be submitted to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas

66101. Electronic comments should be sent either to Wayne Kaiser at kaiser.wayne@epa.gov, or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in "What action is EPA taking" in the **SUPPLEMENTARY INFORMATION** section.

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

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

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

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this document?

Have the requirements for approval of a SIP revision been met?

What action is EPA taking?

What Is a SIP?

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

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

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

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally

adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

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

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

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

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

What Is Being Addressed in This Document?

This rule was first adopted by the Missouri Department of Natural Resources (MDNR) in 1991 to control volatile organic compound (VOC) emissions in the Kansas City, Missouri, ozone nonattainment area, specifically Clay, Platte, and Jackson counties. As such, it is a reasonably available control technology (RACT) rule which was approved in the SIP when we approved the redesignation request and maintenance plan for the Kansas City ozone nonattainment area. Consequently, EPA reviews any revisions to the rule in light of RACT guidelines and policy.

The state's intent in revising this rule was to clarify the applicability provisions in section (1). It was determined that the applicability formula in section (1)(B) was incorrect

and inconsistent with the narrative portion of the rule which preceded it. Using the incorrect formula could have resulted in an under reporting of emissions and sources consequently determining that they were not subject to the rule itself. In addition, since the state was revising the rule for technical reasons, it also took this opportunity to renumber and reformat the rule into its revised, standardized, rule format.

The rule was simply revised to delete the formula in section (1)(B). This did not result in any changes to the applicability provisions, other than to clarify them, and thus the rule remains consistent with our RACT policy and guidance.

With respect to reorganizing the rule, relevant changes are: old section 5 Compliance provisions are now incorporated into new section 4(F), and old section 6 Calculations provisions are now incorporated into new section 1(B).

Have the Requirements for Approval of a SIP Revision Been Met?

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

What Action Is EPA Taking?

We are approving as an amendment to the Missouri SIP a revision to rule 10 CSR 10-2.340, Control of Emissions from Lithographic Printing Installations, which was effective in the state on September 30, 2003.

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

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, MO 196-1196a, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be

marked "late." EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. Electronic mail. Comments may be sent by e-mail to kaiser.wayne@epa.gov. Please include identification number MO 196-1196a in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through [Regulations.gov](http://www.regulations.gov), EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. [Regulations.gov](http://www.regulations.gov). Your use of [Regulations.gov](http://www.regulations.gov) is an alternative method of submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, click on "To Search for Regulations," then select Environmental Protection Agency and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

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

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, “Protection of

Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 29, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 17, 2003.
William Rice,
Acting Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320(c) the table for Chapter 2 is amended by revising the entry for 10–2.340 to read as follows:

§ 52.1320 Identification of plan.
* * * * *
(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
10–2.340	Control of emissions from lithographic printing facilities	9/30/03	10/30/03 [insert FR page citation].	

* * * * *

[FR Doc. 03-27261 Filed 10-29-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

Standards of Performance for New Stationary Sources

CFR Correction

In title 40 of the Code of Federal Regulations, part 60 (§ 60.1 to End), revised as of July 1, 2003, in § 60.51c, on page 204, in the definition of *Maximum design waste burning capacity*, in paragraph (1), in the ninth line, correct "68,500" to read "8,500" and in paragraph (2), in the sixth line, correct "164.5" to read "4.5".

[FR Doc. 03-55529 Filed 10-29-03; 8:45 am]

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-3040; MB Docket No.03-160; RM-10706]

Radio Broadcasting Services; Camp Verde and Payson, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 282C from Payson, Arizona, to Camp Verde, Arizona, and modifies the license for Station KAJM accordingly in response to a petition filed by Sierra H Broadcasting, Inc. See 68 FR 43704, July 24, 2003. The coordinates for Channel 282C at Camp Verde, Arizona, are 34-25-48 and 111-30-16. With this action, this proceeding is terminated.

DATES: Effective November 24, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 03-160, adopted October 8, 2003, and released October 10, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th

Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Camp Verde, Channel 282C and by removing Channel 282C at Payson.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-27370 Filed 10-29-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-3041; MB Docket No. 03-176; RM-10702]

Radio Broadcasting Services; Harrison, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission allots Channel 280A at Harrison, Michigan, in response to a petition filed by Commercial Radio of Harrison. See 68 FR 47283 (August 8, 2003). Channel 280A can be allotted to Harrison, Michigan, with a site restriction 14.1 kilometers (8.7 miles) south of the community at coordinates 43-53-33 and 84-49-06. Although Canadian concurrence has been requested for the allotment of Channel 280A at Harrison, Michigan, notification

has not been received. Therefore, operation with the facilities specified for Channel 280A at Harrison herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement or if specifically objected to by Canada. With this action, this proceeding is terminated. A filing window for channel 280A at Harrison will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective November 24, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03-176, October 8, 2003, and released October 10, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 280A at Harrison.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-27369 Filed 10-29-03; 8:45 am]

BILLING CODE 6712-01-P

Proposed Rules

Federal Register

Vol. 68, No. 210

Thursday, October 30, 2003

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

Security Program and Appendix B—Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The NCUA Board is proposing a modification to its security program requirements to include response programs for unauthorized access to member information. Further, the NCUA Board is requesting comment on proposed Guidelines for implementing a response program for unauthorized access to member information, including member notice.

In addition, as part of its continuing efforts to reduce paperwork and respondent burden, NCUA invites the general public and other federal agencies to take this opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

DATES: Comments must be received on or before December 29, 2003.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. You are encouraged to fax comments to (703) 518-6319 or email comments to regcomments@ncua.gov instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Matthew J. Biliouris, Senior Information Systems Officer, Office of Examination & Insurance, Division of Supervision, (703) 518-6394.

SUPPLEMENTARY INFORMATION:

I. Background

In 2001, NCUA amended 12 CFR Part 748 to fulfill a requirement in Section 501 of the Gramm-Leach-Bliley Act (GLBA) (Pub. L. 106-102), in which Congress directed NCUA and the federal banking agencies, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (collectively, the "Agencies") to establish standards for financial institutions relating to administrative, technical, and physical safeguards to: (1) Insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer.¹

Although NCUA worked with the other Agencies to develop the standards described above, the other Agencies issued their standards as guidelines under the authority of Section 39 of the Federal Deposit Insurance Act.

Since Section 39 of the Federal Deposit Insurance Act does not apply to NCUA, the agency determined that it could best meet the congressional directive to prescribe standards through an amendment to its existing regulation governing security programs for federally insured credit unions and provide guidance to credit unions, substantially identical to the guidelines issued by the Agencies, in an appendix to the regulation. 12 CFR Part 748, Appendix A; 66 FR 8152 (January 30, 2001) (the preamble to the final rule discusses the different regulatory framework under which the other federal financial institution regulators issued their guidelines). The final regulation requires that federally insured credit unions establish and maintain a security program implementing the safeguards required by the GLBA.

Appendix A, entitled Guidelines for Safeguarding Member Information, (Appendix A) is intended to outline industry best practices and assist credit unions to develop meaningful and effective security programs to ensure

their compliance with the requirements contained in the regulation. Among other things, Appendix A advises credit unions to: (1) Identify reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of member information or member information systems; (2) assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of member information; and (3) assess the sufficiency of policies, procedures, member information systems, and other arrangements in place to control risks.²

This proposed rule further amends Part 748 to require that federally insured credit unions' security programs contain a provision for responding to incidents of unauthorized access to member information. An Appendix B, entitled Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice, is also provided to assist credit unions in developing and maintaining their response programs.

As proposed, Appendix B describes NCUA's expectation that every federally insured credit union develop a response program to protect against and address reasonably foreseeable risks associated with internal and external threats to the security of member information maintained by the credit union or its service provider. Appendix B (referred to hereinafter as the "proposed Guidance") further describes the components of a response program, which should include procedures for notifying members about incidents of unauthorized access to member information that could result in substantial harm or inconvenience to the member. The proposed Guidance provides that a credit union is expected to expeditiously implement its response program to address incidents of unauthorized access to or use of member information. A response program should contain policies and procedures that enable the credit union to:

A. Assess the situation to determine the nature and scope of the incident, and identify the information systems and types of member information affected;

B. Notify the credit union's regulator and, in accordance with applicable

¹ 12 CFR part 748.

² 12 CFR Part 748, Appendix A, Paragraph III.B.

regulations and guidance, file a Suspicious Activity Report and notify appropriate law enforcement agencies;

C. Take measures to contain and control the incident to prevent further unauthorized access to or use of member information, including shutting down particular applications or third party connections, reconfiguring firewalls, changing computer access codes, and modifying physical access controls; and

D. Address and mitigate harm to individual members.

The proposed Guidance describes the following corrective measures a credit union should include as a part of its response program in order to effectively address and mitigate harm to individual members:

A. Flag Accounts—The credit union should identify accounts of members whose information may have been compromised, monitor those accounts for unusual activity, and initiate appropriate controls to prevent the unauthorized withdrawal or transfer of funds from member accounts.

B. Secure Accounts—The credit union should secure all accounts associated with the member information that has been the subject of unauthorized access or use.

C. Member Notice and Assistance—The credit union should, under certain circumstances, notify affected members when sensitive member information about them is the subject of unauthorized access. Where the credit union can specifically identify affected members from its logs, notification may be limited to those persons only. Otherwise, the credit union should notify each member in those groups likely to be affected.

The proposed Guidance provides that a credit union should notify each affected member when it becomes aware of unauthorized access to sensitive member information, unless the credit union, after an appropriate investigation, reasonably concludes that misuse of the information is unlikely to occur, and takes appropriate steps to safeguard the interests of affected members, including monitoring affected members' accounts for unusual or suspicious activity. For the purposes of the proposed Guidance, NCUA defines sensitive member information to mean a member's social security number, personal identification number (PIN), password, or account number, in conjunction with a personal identifier, such as the individual's name, address, or telephone number. Sensitive member information would also include any combination of components of member information that would allow someone

to log onto or access another person's account, such as user name and password.

Under Part 748 and Appendix A, credit unions must have a security program designed to protect against unauthorized access to or use of member information that could result in substantial harm or inconvenience to any member. NCUA believes that substantial harm or inconvenience is most likely to result from the improper access to and use of sensitive member information. Accordingly, the proposed Guidance anticipates that notice will be given in such cases, in order to mitigate or prevent substantial harm or inconvenience to a member.

NCUA notes that the response program described under the proposed Guidance should address incidents involving the unauthorized access to or use of any form of member information. However, the proposed Guidance anticipates that member notice will only occur in cases of security breaches involving sensitive member information.

The proposed Guidance provides several examples NCUA believes typify situations in which member notification is expected and those when it is not. As in other circumstances, NCUA also expects credit unions to notify members when directed to do so by the credit union's primary regulator.

The proposed Guidance discusses the content and delivery of member notices. The notice should include a general description of the incident, and provide information to assist members in mitigating potential harm, including a member service number, steps members can take to obtain and review their credit reports and to file fraud alerts with nationwide credit reporting agencies, and sources of information designed to assist individuals in protecting against identity theft.

In addition, credit unions are expected to inform each member about the availability of the Federal Trade Commission's ("FTC") online guidance regarding measures to protect against identity theft and to encourage the member to report any suspected incidents of identity theft to the FTC. Further, credit unions should provide the FTC's Web site address and telephone number for purposes of obtaining guidance and reporting suspected incidents of identity theft. Currently, the Web site address is <http://www.ftc.gov/idtheft>, and the toll free number for the identity theft hotline is 1-877-IDTHEFT.

The proposed Guidance also describes other forms of assistance that financial institutions have offered to their

customers in incidents of this type. Credit unions may wish to offer such forms of assistance to their members and describe them in the member notice.

II. Request for Comments

NCUA invites comment on all aspects of the proposed amendment of Part 748 and the proposed Guidance, including each component of the response program described in Paragraph II of the proposed Guidance. Please consider the following in formulating your comments:

- Should any component of the response program be clarified in some way and, if so, how?

- Are there additional components that should be included in a response program to address incidents involving unauthorized access to or use of member information? If so, please describe the component, and the reasons that support it.

- Should each component of the response program be retained? If not, which components should be deleted and why?

- In preparing the proposed Guidance, NCUA has attempted to identify a standard that will lead to member notice when appropriate. NCUA recognizes that there is a spectrum of alternatives for developing a requirement to notify members. On one side of the spectrum is a standard that would require a credit union to notify its members every time the mere possibility of misuse of member information arises. On the other side is a standard that would require a credit union to notify its members only when it becomes aware of an incident involving unauthorized access to member information and, based on unusual activity in members' accounts or other indicia of identity theft, knows that the information is being misused. NCUA proposes a standard that lies in the middle of this spectrum. NCUA believes that no useful purpose would be served if notices were sent due to the mere possibility of misuse of some member information. In general, the notices should alert members to those situations where enhanced vigilance is necessary to protect against fraud or identity theft. NCUA believes that notice to members is appropriate in a narrower range of instances involving the unauthorized access to sensitive member information. The proposed Guidance anticipates that a credit union would send notice to each affected member when the credit union becomes aware of an incident of unauthorized access to sensitive member information, unless the credit union, after an

appropriate investigation, reasonably concludes that misuse of the information is unlikely to occur and takes appropriate steps to safeguard the interests of affected members, including by monitoring affected members' accounts for unusual or suspicious activity. NCUA invites comment on whether this is the appropriate standard for triggering member notice. For commenters who believe that this standard is inappropriate, NCUA requests that these commenters state specifically their reasoning and offer alternative thresholds for triggering member notice.

- The proposed Guidance defines sensitive member information as a social security number, a personal identification number (PIN), password, or an account number in conjunction with a personal identifier. Sensitive member information would also include any combination of components of member information that would allow someone to log onto or access another person's account, such as user name and password. NCUA requests comment on which, if any, additional types of information should be included in this definition, such as mother's maiden name or driver's license number.

- NCUA invites comment on the potential burden associated with the member notice provisions. For example, what is the anticipated burden that may arise from the questions posed by those members who receive the notices? Should NCUA consider how the burden may vary depending upon the size and complexity of the credit union?

- As part of the response program, NCUA describes certain corrective measures that a credit union should take once an incident of unauthorized access occurs. One such measure is to "secure accounts." Is the discussion of securing accounts sufficiently clear to enable credit unions to know what is expected of them when instances of unauthorized access occur? To what extent would contracts between credit unions and service providers need to be modified, if at all, to comply with expectations of the proposed rule and proposed Guidance? How much burden, if any, will the proposed Guidance impose on service providers?

- NCUA also invites comment on whether the proposed standard should be modified to apply to other extraordinary circumstances that compel a credit union to conclude that unauthorized access to information, other than sensitive member information, likely will result in substantial harm or inconvenience to the affected members.

- The proposed Guidance includes examples of circumstances in which member notice would be expected and those when it would not. Please comment on whether the examples in the proposed Guidance should be modified or supplemented and provide your rationale.

III. Regulatory Procedures

Paperwork Reduction Act

A. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995, NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. NCUA has determined that the proposed rule is covered under the Paperwork Reduction Act and is submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for approval as a revision of OMB control number 3133-0033, which is the control number currently associated with the collection of information under Part 748 requiring a written security program.

The proposed amendment would require federally insured credit unions to review their existing written security programs to ensure they are designed to respond to incidents of unauthorized access to or use of member information in certain circumstances. To meet this requirement, NCUA expects federally insured credit unions will: (1) Develop notices to members, (2) determine which members should receive the notices and send the notices to members, and (3) ensure that their contracts with their service providers conform to the procedures they develop. The NCUA Board estimates it will take an average of 20 hours for a credit union to comply with the incident response element. The Board also estimates that credit unions will require 24 hours per incident (three business days) to determine which members should receive the notice and notify the members. For the purposes of this analysis, it is estimated that two percent of credit unions will experience an incident of unauthorized access to member information on an annual basis, resulting in member notification.³

³ This estimate is based upon NCUA's experience and data involving banks gathered by the FDIC that indicates slightly less than one percent of those institutions experienced some form of unauthorized access to customer information during any 12 month period. However, NCUA assumes that other incidents of unauthorized access to customer or

Thus, the burden associated with this collection of information may be summarized as follows:

Number of Respondents: 9,528.

Estimated Time per Response:

Developing notices: 20 hrs × 9,528 = 190,560 hours.

Notifying members: 24 × 210 = 5,040 hours.

Estimated Total Annual Burden: 195,600 hours.

However, the burden estimate does not include time for credit unions to adjust their contracts with service providers, if needed; nor for service providers to disclose information pursuant to the proposed Guidance.

The Paperwork Reduction Act and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on:

(1) Whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimates on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements.

Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Joseph Lackey, Desk Officer for NCUA. Please send NCUA a copy of any comments submitted to OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA) requires an agency to publish an initial regulatory flexibility analysis whenever the agency is required to publish a general notice of proposed rulemaking for a proposed rule unless it is determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Board cannot at this time determine whether the proposed rule would have significant economic impact on a substantial number of small entities. Therefore, pursuant to subsections 603(b) and (c) of the RFA, the Board provides the following initial regulatory flexibility analysis.

A. Reasons for Proposed Rule

The NCUA is requesting comment on a proposed amendment to Part 748 of its regulations and guidelines for credit unions in the form of Appendix B.

member information may have occurred but were not reported.

These proposals augment existing requirements and guidance regarding the security of member records previously adopted pursuant to Section 501 of the GLBA. Section 501 requires the Agencies to publish standards for financial institutions relating to administrative, technical, and physical standards to: (1) Insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer. The reasons for NCUA's actions are further described in the Supplementary Information section.

B. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** section above contains this information. The legal basis for the proposed rule is the GLBA.

C. Estimate of Small Credit Unions to Which the Rule Applies

The proposed rule would apply to all federally insured credit unions. Small credit unions are defined by NCUA as those with less than \$10,000,000 in assets of which there are approximately 4,646. Interpretive Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations, 52 FR 35231 (Sep. 18, 1987), as amended by IRPS 03-2 68 FR 31949 (May 29, 2003).

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The information collection requirements imposed by the proposed rule are discussed above in the section on the Paperwork Reduction Act.

E. General Requirements

Credit unions are already required under the GLBA and § 748.0 of NCUA's Rules and Regulations to develop an information security program to safeguard member information. Development of such a program involves assessing risks to member information, establishing policies, procedures, and training to control risks, testing the program's effectiveness, and managing and monitoring service providers. This proposed rule would require that the information security program contain an element that is designed to respond to incidents involving breach of information integrity. The NCUA believes that the establishment of information security programs is a

sound business practice for a credit union and is already addressed by existing supervisory procedures. However, the proposed rule may require some credit unions to enhance existing information security programs, but the cost of doing so is not known. The NCUA seeks any information or comment on the costs of enhancing existing information security programs.

F. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The NCUA is unable to identify any statutes or rules which would overlap or conflict with the requirement to assure that existing information security programs contain a response element relating to breaches of information integrity. The NCUA seeks comment and information about any such statutes or rules, as well as any other state, local, or industry rules or policies that require a credit union to implement business practices that would comply with the requirements of the proposed rule.

G. Discussion of Significant Alternatives

As previously noted, credit unions are already required by GLBA and existing regulation to develop and implement a meaningful security program. The proposed rule would require that such security programs include a provision for appropriate responses to incidents involving a breach of information integrity. Consistent with the position taken by the other Agencies, the NCUA views this as a fundamental element of any information security program. However, the proposed rule also provides substantial flexibility so that any credit union, regardless of size, may adopt an information security program tailored to its individual needs. The NCUA welcomes comment on any significant alternatives, consistent with the GLBA that would minimize the impact on small credit unions.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has

federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects in 12 CFR Part 748

Credit unions, Crime, Currency, Reporting and recordkeeping requirements, Security measures.

By the National Credit Union Administration Board on October 23, 2003.

Becky Baker,
Secretary of the Board.

For reasons set forth in the preamble, the NCUA Board proposes to amend 12 CFR 748 as follows:

PART 748—SECURITY PROGRAM, REPORT OF CRIME AND CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE

1. The authority citation for Part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(Q); 15 U.S.C. 6801 and 6805(b); 31 U.S.C. 5311 and 5318.

2. In § 748.0 revise paragraph (b) to read as follows:

§ 748.0 Security program.

* * * * *

(b) The security program will be designed to:

(1) Protect each credit union office from robberies, burglaries, larcenies, and embezzlement;

(2) Ensure the security and confidentiality of member records, protect against the anticipated threats or hazards to the security or integrity of such records, and protect against unauthorized access to or use of such records that could result in substantial harm or serious inconvenience to a member;

(3) Respond to incidents of unauthorized access to or use of member information that could result in substantial harm or serious inconvenience to a member;

(4) Assist in the identification of persons who commit or attempt such actions and crimes, and

(5) Prevent destruction of vital records, as defined in the Accounting Manual for Federal Credit Unions.

3. Add Appendix B to read as follows:

Appendix B to Part 748—Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice

I. Background

This Guidance in the form of appendix B to NCUA's Security Program, Report of Crime and Catastrophic Act and Bank Secrecy Act Compliance regulation,¹ interprets section 501(b) of the Gramm-Leach-Bliley Act ("GLBA") and describes NCUA's expectations regarding how federally insured credit unions should develop and implement response programs, including member notification procedures, to address unauthorized access to or use of member information that could result in substantial harm or inconvenience to a member.

Security Guidelines

Section 501(b) of the GLBA required NCUA to establish appropriate standards for credit unions subject to its jurisdiction that include administrative, technical, and physical safeguards to protect the security and confidentiality of member information.² Accordingly, NCUA amended part 748 of its rules to require credit unions to develop appropriate security programs, and issued appendix A to part 748 (appendix A), reflecting its expectation that every federally insured credit union would develop an information security program designed to:

- Ensure the security and confidentiality of member information;
- Protect against any anticipated threats or hazards to the security or integrity of such information; and
- Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any member.

Risk Assessment and Controls

Appendix A advises every credit union to assess the following risks, among others, when developing its information security program:

- Reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of member information or member information systems;
- The likelihood and potential damage of threats, taking into consideration the sensitivity of member information; and
- The sufficiency of policies, procedures, member information systems, and other arrangements in place to control risks.³

Following the assessment of these risks, appendix A calls for a credit union to design a program to address the identified risks. The particular security measures a credit union should adopt will depend upon the risks presented by the complexity and scope of its business. At a minimum, the credit union should consider the specific security measures enumerated in appendix A,⁴ and adopt those that are appropriate for the credit union, including:

- Access controls on member information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing member information to unauthorized individuals who may seek to obtain this information through fraudulent means;
- Background checks for employees with responsibilities for access to member information; and
- Response programs that specify actions to be taken when the credit union suspects or detects that unauthorized individuals have gained access to member information systems, including appropriate reports to regulatory and law enforcement agencies.⁵

Service Providers

Appendix A advises every credit union to require its service providers by contract to implement appropriate measures designed to protect against unauthorized access to or use of member information that could result in substantial harm or inconvenience to any member.⁶ Consistent with existing guidance issued by the Agencies, a credit union's contract with its service provider should require the service provider to fully disclose to the credit union information relating to any breach in security resulting in an unauthorized intrusion into the credit union's member information systems maintained by the service provider.⁷ In view of these contractual obligations, the service provider would be required to take appropriate actions to address incidents of unauthorized access to or use of the credit union's member information to enable the credit union to expeditiously implement its response program.⁸

Response Program

As internal and external threats to the security of member information are reasonably foreseeable and may lead to the misuse of member information, NCUA

expects every federally-insured credit union to develop a response program to protect against the risks associated with these threats. The response program should include measures to protect member information in member information systems maintained by the credit union or its service providers. NCUA expects that member notification will be a component of a credit union's response program, as described below.

II. Components of a Response Program

A response program should be a key part of a credit union's information security program.⁹ Having such a program in place will allow the credit union to quickly respond¹⁰ to incidents involving the unauthorized access to or use of member information in its own member information systems that could result in substantial harm or inconvenience to a member. Under appendix A, a credit union's *member information systems* consist of all of the methods used to access, collect, store, use, transmit, protect, or dispose of member information, including the systems maintained by its service providers.¹¹

Timely notification of members, under the circumstances described below, is important to manage a credit union's reputation risk. Effective notice may reduce legal risk, assist in maintaining good member relations, and enable the credit union's members to take steps to protect themselves against the consequences of identity theft.

A response program should contain the following components:

A. Assess the Situation

The credit union should assess the nature and scope of the incident, and identify what member information systems and types of member information have been accessed or misused.

B. Notify Regulatory and Law Enforcement Agencies

The credit union should promptly notify NCUA or its primary state regulator when it becomes aware of an incident involving unauthorized access to or use of member information that could result in substantial harm or inconvenience to its members.

A credit union also should file a Suspicious Activity Report ("SAR"), if required, in accordance with the applicable SAR regulations¹² and NCUA guidance.¹³ Consistent with NCUA's SAR regulations, in situations involving federal criminal violations requiring immediate attention, such as when a reportable violation is ongoing, the credit union should

⁴ See appendix A, paragraph III.C.

⁵ See appendix A, paragraph III.C.1.g.

⁶ See appendix A, paragraphs II.B. and III.D.

⁷ See NCUA Letter to Credit Unions No. 00-CU-11, Risk Management of Outsourced Technology Services, Dec. 2000.

⁸ NCUA is aware that, in addition to contractual obligations to a credit union, a service provider may be required to implement its own comprehensive information security program in accordance with the Safeguards Rule promulgated by the (FTC). 12 CFR part 314 applies to the handling of all customer information possessed by any financial institution subject to the jurisdiction of the FTC, regardless of whether such information pertains to individuals with whom the institution has a customer relationship or pertains to the customers of other financial institutions that have provided such information to that institution.

⁹ See FFIEC Information Security Booklet, Dec. 2002.

¹⁰ Credit unions are expected to provide employees with the training necessary to understand their roles and responsibilities in order to expeditiously implement the credit union's response program to address incidents of unauthorized access to and use of member information.

¹¹ See appendix A, paragraph I.B.2.c.

¹² 12 CFR 748.1(c).

¹³ NCUA Letter to Credit Unions No. 00-CU-04, Suspicious Activity Reporting, July 2000.

¹ 12 CFR part 748.

² The term "member information" is the same term used in appendix A and means any record containing nonpublic personal information whether in paper, electronic, or other form, maintained by or on behalf of the credit union.

³ See appendix A, paragraph III.B.

immediately notify, by telephone, appropriate law enforcement authorities and NCUA or its primary state regulator, in addition to filing a timely SAR.

C. Contain and Control the Situation

The credit union should take measures to contain and control the incident to prevent further unauthorized access to or use of member information, while preserving records and other evidence.¹⁴ Depending upon the particular facts and circumstances of the incident, these measures could include, in connection with computer intrusions: (i) Shutting down applications or third party connections; (ii) reconfiguring firewalls in cases of unauthorized electronic intrusion; (iii) ensuring that all known vulnerabilities in the credit union's computer systems have been addressed; (iv) changing computer access codes; (v) modifying physical access controls; and (vi) placing additional controls on service provider arrangements.

D. Corrective Measures

Once a credit union understands the scope of the incident and has taken steps to contain and control the situation, it should take measures to address and mitigate the harm to individual members. For example, the credit union should take the following measures:

1. Flag Accounts

The credit union should immediately begin identifying and monitoring the accounts of those members whose information may have been accessed or misused. In particular, the credit union should provide staff with instructions regarding the recording and reporting of any unusual activity, and if indicated given the facts of a particular incident, implement controls to prevent the unauthorized withdrawal or transfer of funds from member accounts.

2. Secure Accounts

When a share draft, savings, deposit or other account number, debit or credit card account number, personal identification number (PIN), password, or other unique identifier has been accessed or misused, the credit union should secure the account, and all other accounts and credit union services that can be accessed using the same account number or name and password combination until such time as the credit union and the member agree on a course of action.¹⁵

3. Member Notice and Assistance

Under part 748 and appendix A, a credit union's security program must be designed to protect its members' information against unauthorized access or use. A credit union should not forgo notifying its members of an incident because the credit union believes that it may be potentially embarrassed or inconvenienced by doing so. Under the circumstances described in appendix A, the credit union should notify and offer assistance to members whose information

was the subject of the incident.¹⁶ If the credit union is able to determine from its logs or other data precisely which members' information was accessed or misused, it may restrict its notification to those individuals. However, if the credit union cannot identify precisely which members are affected, it should notify each member in groups likely to have been affected, such as each member whose information is stored in the group of files in question.

a. Delivery of Member Notice—Member notice should be timely, clear, and conspicuous, and delivered in any manner that will ensure that the member is likely to receive it. For example, the credit union may choose to contact all members affected by telephone or by mail, or for those members who conduct transactions electronically, using electronic notice.

b. Content of Member Notice—The notice should describe the incident in general terms and the member's information that was the subject of unauthorized access or use. It should also include a number that members can call for further information and assistance. The notice also should remind members of the need to remain vigilant, over the next twelve to twenty-four months, and to promptly report incidents of suspected identity theft.

Key Elements: In addition, the notice should:

- Inform affected members that the credit union will assist the member to correct and update information in any consumer report relating to the member, as required by the Fair Credit Reporting Act;
- Recommend that the member notify each nationwide credit reporting agency to place a fraud alert¹⁷ in the member's consumer reports;
- Recommend that the member periodically obtain credit reports from each nationwide credit reporting agency and have information relating to fraudulent transactions deleted;
- Inform the member of the right to obtain a credit report free of charge, if the member has reason to believe that the file at the consumer reporting agency contains inaccurate information due to fraud, together with contact information regarding the nationwide credit reporting agencies; and
- Inform the member about the availability of the FTC's online guidance regarding steps a consumer can take to protect against identity theft, and encourage the member to report any incidents of identity theft to the FTC. The notice should provide the FTC's Web site address and toll-free telephone number that members may use to obtain the identity theft guidance and report suspected incidents of identity theft.¹⁸

Optional Element: Credit unions also may wish to provide members with the following additional types of assistance that have been offered under these circumstances:

¹⁶ The credit union should, therefore, ensure that a sufficient number of appropriately trained employees are available to answer member inquiries and provide assistance.

¹⁷ A fraud alert will put the member's creditors on notice that the member may be a victim of fraud.

¹⁸ Currently, the FTC Web site for the ID Theft brochure and the FTC Hotline phone number are www.ftc.gov/idtheft and 1-877-IDTHEFT.

- Provide a toll-free telephone number that members can call for assistance;
- Offer to assist the member in notifying the nationwide credit reporting agencies of the incident and in placing a fraud alert in the member's consumer reports; and
- Inform the member about subscription services that provide notification anytime there is a request for the member's credit report or offer to subscribe the member to this service, free of charge, for a period of time.

The credit union may also wish to include with the notice a brochure regarding steps a member can take to protect against identity theft, prepared by the Agencies that can be downloaded from the Internet.¹⁹

III. Circumstances for Member Notice

Standard for Providing Notice

A credit union should notify affected members whenever it becomes aware of unauthorized access to sensitive member information unless the credit union, after an appropriate investigation, reasonably concludes that misuse of the information is unlikely to occur and takes appropriate steps to safeguard the interests of affected members, including by monitoring affected members' accounts for unusual or suspicious activity.

Sensitive Member Information

Under part 748 and appendix A, a credit union must have a written security program designed to protect against unauthorized access to or use of member information that could result in substantial harm or inconvenience to any member. Substantial harm or inconvenience is most likely to result from improper access to sensitive member information because this type of information is easily misused, as in the commission of identity theft. For purposes of this Guidance, sensitive member information means a member's social security number, personal identification number, password or account number, in conjunction with a personal identifier such as the member's name, address, or telephone number. Sensitive member information would also include any combination of components of member information that would allow someone to log onto or access another person's account, such as user name and password. Therefore, credit unions are expected to notify affected members when sensitive member information has been improperly accessed, unless the credit union, after an appropriate investigation, reasonably concludes that misuse of the information is unlikely to occur and takes appropriate steps to safeguard the interests of affected members.

Examples of When Notice Should Be Given

A credit union should notify affected members when it is aware of the following incidents unless the credit union, after an appropriate investigation, can reasonably conclude that misuse of the information is

¹⁹ www.occ.treas.gov/idtheft.pdf;
www.federalreserve.gov/consumers.htm;
www.ftc.gov/consumers/consumer/news/cnsum00/idthft.html.

¹⁴ See FFIEC Information Security Booklet, Dec. 2002, pp. 68–74.

¹⁵ The credit union should also consider the use of new account numbers and steps to ensure that members do not reuse the same or a similar personal identification number.

unlikely to occur and takes appropriate steps to safeguard the interests of affected members.

- An employee of the credit union has obtained unauthorized access to sensitive member information maintained in either paper or electronic form;
- A cyber intruder has broken into an credit union's unencrypted database that contains sensitive member information;
- Computer equipment such as a laptop computer, floppy disk, CD-ROM, or other electronic media containing sensitive member information has been lost or stolen;
- A credit union has not properly disposed of member records containing sensitive member information; or
- The credit union's third party service provider has experienced any of the incidents described above, in connection with the credit union's sensitive member information.

Examples of When Notice Is Not Expected

A credit union is not expected to give notice when it becomes aware of an incident of unauthorized access to member information, and the credit union, after an appropriate investigation, can reasonably conclude that misuse of the information is unlikely to occur and takes appropriate steps to safeguard the interests of affected members. For example, a credit union would not need to notify affected members in connection with the following incidents:

- The credit union is able to retrieve sensitive member information that has been stolen, and reasonably concludes, based upon its investigation of the incident, that it has done so before the information has been copied, misused or transferred to another person who could misuse it;
- The credit union determines that sensitive member information was improperly disposed of, but can establish that the information was not retrieved or used before it was destroyed;
- A hacker accessed files that contain only member names and addresses; or
- A laptop computer containing sensitive member information is lost, but the data is encrypted and may only be accessed with a secure token or similarly secure access device.

[FR Doc. 03-27312 Filed 10-29-03; 8:45 am]

BILLING CODE 7535-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-CE-38-AD]

RIN 2120-AA64

Airworthiness Directives; Pacific Aerospace Corporation, Ltd. Models FU24-954 and FU24A-954 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Pacific Aerospace Corporation, Ltd. Models FU24-954 and FU24A-954 airplanes. This proposed AD would require you to perform repetitive detailed visual inspections of the forward vertical fin base for cracks. If any cracks or discrepancies are found, you must repair the structure before further flight and notify the FAA. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for New Zealand. We are issuing this proposed AD to detect and correct cracks in the vertical fin base, which could result in loss of the fin and loss of aircraft control.

DATES: We must receive any comments on this proposed AD by December 8, 2003.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-38-AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329-3771.
- *By e-mail:* 9-ACE-7-

Docket@faa.gov. Comments sent electronically must contain "Docket No. 2003-CE-38-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-38-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, 901 Locust, Room 302, Kansas City, MO 64106; telephone: 816-329-4146; facsimile: 816-329-4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003-CE-38-AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed,

stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What Events Have Caused This Proposed AD?

The CAA, which is the airworthiness authority for New Zealand, notified the FAA of an unsafe condition that may exist on all Pacific Aerospace Corporation, Ltd. Models FU24-954 and FU24A-954 airplanes. The CAA reports a recent fatal accident where the aircraft's fin separated in flight. Initial investigation of this accident indicates that the forward fin structure failed from fatigue cracks that were concealed beneath the rubber abrasion protection fitted to the fin.

What Are the Consequences if the Condition Is Not Corrected?

Failure to detect cracks in the vertical fin base could result in loss of the fin and loss of aircraft control.

Is There Service Information That Applies to This Subject?

No.

What Action Did the CAA Take?

The CAA issued New Zealand AD Number DCA/FU24/173, dated 23 April 2002, in order to ensure the continued airworthiness of these airplanes in New Zealand.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These Pacific Aerospace Corporation, Ltd. Models FU24-954 and FU24A-954 airplanes are manufactured in New Zealand 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.

Per this bilateral airworthiness agreement, the CAA has kept us

informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What Has FAA Decided?

We have examined the CAA's findings, 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.

Since the unsafe condition described previously is likely to exist or develop on other Pacific Aerospace Corporation, Ltd. Models FU24-954 and FU24A-954 airplanes of the same type design that are registered in the United States, we are proposing AD action to detect cracks

in the vertical fin base, which could result in loss of the fin and loss of aircraft control.

What Would This Proposed AD Require?

This proposed AD would require you to perform repetitive detailed visual inspections of the forward vertical fin base for cracks. If any cracks or discrepancies are found, you must repair the structure before further flight and notify the FAA.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes

material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 2 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 work hours est. \$60 per hour = \$480 ..	No parts needed for inspection	\$480 per airplane	\$960

The FAA has no method of determining the number of repairs each owner/operator would incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Regulatory Findings

Would This Proposed AD Impact Various Entities?

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003-CE-38-AD" in your request.

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 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. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Pacific Aerospace Corporation, Ltd.: Docket No. 2003-CE-38-AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by December 8, 2003.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category: Pacific Aerospace Corporation, Ltd. Models FU24-954 and FU24A-954 airplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of a recent fatal accident where the aircraft's fin separated in flight. The actions specified in this AD are intended to detect and correct cracks in the vertical fin base, which could result in loss of the fin or loss of control of the aircraft.

What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Perform visual inspection of the forward area at the base of the fin for cracks.	Initially inspect within the next 50 hours time-in-service (TIS) after the effective date of this AD. Repetitively inspect every 100 hours TIS thereafter.	Inspect from the bottom of the fin up to the first external strap, paying particular attention to the skin in the area of the rivets that join the fin skin to bulkhead, part number (P/N) 242305, and aft to the first vertical lap joint. To do this inspection, remove any rubber abrasion protection that is fitted in this area, including any sealant. You must also remove the fin leading edge fairing, P/N 242321.
(2) Repair any cracks that are found during the inspection.	Prior to further flight after doing any inspection required in paragraph (e)(1) of this AD.	Obtain FAA-approved repair scheme from manufacturer and notify FAA at the address and phone number in paragraph (f) of this AD.

What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, FAA, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, MO 64106; telephone: 816-329-4146; facsimile: 816-329-4090.

Is There Other Information That Relates to This Subject?

(g) CAA airworthiness directive DCA/FU24/173, dated April 23, 2002, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on October 22, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-27212 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-216-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; Model A300 B4-600, B4-600R, and F4-600R (Collectively Called A300-600) Series Airplanes; and Model A310 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 Airbus Model A300 B2 and B4

series airplanes; Model A300 B4-600, B4-600R, and F4-600R (collectively called A300-600) series airplanes; and Model A310 series airplanes. This proposal would require various modifications and repetitive inspections of the throttle control system, and follow-on actions if necessary. This action is necessary to prevent hard points in the throttle control system that could lead to jamming of the throttle control cable. Such jamming could result in an asymmetric thrust condition and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 1, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-216-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. 2001-NM-216-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer,

International Branch, ANM-116, FAA, Transport Airplane Directorate, 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 2001–NM–216–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. 2001–NM–216–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes. The DGAC advises that operators have reported hard points in the throttle control system on these airplanes. These hard points have been attributed to various discrepancies in the throttle control system, such as accumulation and subsequent freezing of moisture in the throttle control cable (also called the “push-pull” cable) assembly; disconnection of the throttle control cable from the rack-box; stiffness of the throttle controls due to excessive wear, chafing, or other damage; or deterioration of the throttle control cable due to exposure to excessive heat. These conditions, if not corrected, could lead to jamming of the throttle control cable and result in an asymmetric thrust condition and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins:

- Service Bulletin A300–76–0007, Revision 06, dated August 23, 2001 (for certain Airbus Model A300 B2 and B4 series airplanes). That service bulletin describes procedures for installing a flexible ice protection boot on the upper fitting of the throttle and fuel shut-off valve control cables. This boot is intended to prevent accumulation of moisture at the end of the control cable assembly, which could freeze and result in jamming of the control cable.
- Service Bulletins A300–76–0015, Revision 02, dated August 23, 2001 (for certain Airbus Model A300 B2 and B4 series airplanes); and A310–76–2001, Revision 01, dated March 14, 2000 (for certain Model A310–203, –204, –221, and –222 series airplanes). These service bulletins describe procedures for installing a heating system for the throttle control system. This heating

system is intended to prevent freezing and consequent jamming of the throttle controls.

- Service Bulletins A300–76–0016, Revision 03, dated August 23, 2001 (for certain Airbus Model A300 B2 and B4 series airplanes); A300–76–6002, Revision 02, dated August 23, 2001 (for certain Airbus Model A300 B4–620, B4–622, and C4–620 airplanes); and A310–76–2005, Revision 01, dated March 14, 2000 (for certain Airbus Model A310–203, –221, and –222 airplanes). These service bulletins describe procedures for replacing (with new, improved parts) the roller and rotation pin of the secondary relay lever of the throttle control system. This replacement is intended to prevent stiffness of the throttle controls if the roller fails to rotate.
- Service Bulletins A300–76–6003, Revision 04, dated February 26, 2002 (for certain Airbus Model A300 B4–620 airplanes); and A310–76–2006, Revision 03, dated February 26, 2002 (for certain A310–221, –222, and –322 airplanes). These service bulletins describe procedures for repetitive inspections of the throttle control (push-pull) cable and the rack-box connection to detect any discrepancies, including excessive wear, damage, chafing of the cable in the area of the cable guide, backlash due to excessive wear, and excessive play. If discrepancies are found, the service bulletins specify replacement of the affected part with a new part. These service bulletins refer to Airbus Service Bulletins A300–76–6004, Revision 01, dated October 11, 2000; and A310–76–2007, Revision 02, dated November 24, 1988; respectively; which describe procedures for replacing the existing throttle control cable assembly with a new, improved assembly. Such replacement would eliminate the need for the repetitive inspections described previously.
- Service Bulletins A300–76–6007, Revision 01, dated March 14, 2000 (for certain A300 B4–601, –603, and “605R” airplanes); and A310–76–2010, Revision 03, dated August 23, 2001 (for certain A310–204 and –304 airplanes). These service bulletins describe procedures for installing a new cooling duct and a new cooling shroud for the throttle control cable. This installation is intended to prevent deterioration of the throttle control (push-pull) cable due to exposure to excessive heat. These service bulletins refer to GE CF6–80C2 Service Bulletins 71–088, Revision 03, dated March 15, 1991; and 75–021, Revision 03, dated August 5, 1992; for additional service information for accomplishing the installation.

- Service Bulletins A300–76–6009, Revision 02, dated October 29, 1999 (for certain A300 B4–601, B4–603, B4–605R, and C4–605R Variant F airplanes); and A310–76–2012, Revision 02, dated November 5, 2001 (for certain Airbus Model A310–203, –204, and –304 airplanes). These service bulletins describe procedures for installing an elastomer plug filled with grease on the end fitting of the throttle control cable. This installation is intended to prevent accumulation of moisture inside the control cable sleeve due to premature and uneven wear of the throttle control bearing, which could result in freezing and jamming of the throttle control cable.

- Service Bulletin A310–76–2004, Revision 03, dated August 23, 2001 (for certain Airbus Model A310–203 airplanes). This service bulletin describes procedures for installing a sealing sleeve (also called a sealing boot) on the flexible control ball joint of the throttle control cable. The procedures include a visual inspection for deterioration of the throttle control cable, and replacement of the throttle control cable if necessary. The sealing sleeve is intended to prevent accumulation of moisture at the ends of the throttle control cable assembly, which could result in freezing and consequent jamming of the throttle control cable.

Accomplishment of the actions specified in the applicable service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2001–072(B) R2, dated January 23, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have 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, except as discussed below under the heading "Difference Between Proposed AD and Certain Service Bulletins."

Consistent with the findings of the DGAC, the proposed AD would allow repetitive inspections per Airbus Service Bulletin A300-76-6003, Revision 04, or A310-76-2006, Revision 03, as applicable, to continue in lieu of

accomplishing the terminating action per Airbus Service Bulletin A300-76-6004, Revision 01, or A310-76-2007, Revision 02, as applicable. In making this determination, we considered that long-term continued operational safety in this case will be ensured adequately by repetitive inspections to detect any discrepancy of the throttle control cable before it represents a hazard to the airplane.

Difference Between Proposed AD and Certain Service Bulletins

Although Airbus Service Bulletins A300-76-6003, Revision 04, and A310-

76-2006, Revision 03, specify to report the results of the backlash check to the Airbus technical representative, this proposed AD would not require such reporting.

Cost Impact

The table below contains the FAA's estimates of the cost impact on U.S. operators of the actions that would be required by the proposed AD, at an average labor rate of \$65 per work hour.

COST IMPACT: U.S.-REGISTERED AIRPLANES

Actions in Airbus service bulletin	Work hours	Parts cost	Estimated number of airplanes of U.S. registry	Estimated cost per airplane	Estimated fleet cost
A300-76-0007, Revision 06	30	\$0	36	\$1,950	\$70,200
A300-76-0015, Revision 02	11	1,726	36	2,441	87,876
A300-76-0016, Revision 03	1	193	24	258	6,192
A300-76-6002, Revision 02	1	80	83	145	12,035
A300-76-6007, Revision 01	8	None	71	520	36,920
A300-76-6009, Revision 02	6	28	67	418	28,006
A310-76-2001, Revision 01	11	4,469	33	5,184	171,072
A310-76-2004, Revision 03	25	26	25	1,651	41,275
A310-76-2005, Revision 01	1	153	46	218	10,028
A310-76-2006, Revision 03	2	None	16	130	2,080
A310-76-2012, Revision 02	6	28	25	418	10,450

Currently, there are no airplanes on the U.S. Register that would be affected by Airbus Service Bulletin A300-76-6003, Revision 04, or A310-76-2010,

Revision 03. However, if an affected airplane is imported and placed on the U.S. Register in the future, the table below shows the estimated cost of the

actions that would be required by the proposed AD for an affected airplane, at an average labor rate of \$65 per work hour.

POTENTIAL COST IMPACT: AIRPLANE ADDED TO U.S. REGISTER IN THE FUTURE

Airplanes subject to the actions in Airbus service bulletin	Work hours	Parts cost	Estimated cost per airplane
A300-76-6003, Revision 04	2	\$0	\$130
A310-76-2010, Revision 03	8	0	520

If an operator chooses to do the optional terminating action in Airbus Service Bulletin A300-76-6004, Revision 01, or A310-76-2007, Revision 02; rather than continue the repetitive inspections in Airbus Service Bulletin A300-76-6003, Revision 04, or A310-76-2006, Revision 03, respectively; it would take about 20 work hours per airplane to accomplish the optional terminating action, at an average labor rate of \$65 per work hour. Required parts would cost about \$18,800 per airplane. Based on these figures, we estimate the cost of this optional terminating action to be \$20,100 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of

the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. 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:

Airbus: Docket 2001–NM–216–AD.

Applicability: Airplanes as listed in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Airplane models	As listed in Airbus Service Bulletin—
A300 B2 and B4 series	A300–76–0007, Revision 06, dated August 23, 2001.
A300 B2 and B4 series	A300–76–0015, Revision 02, dated August 23, 2001.
A300 B2 and B4 series	A300–76–0016, Revision 03, dated August 23, 2001.
A300 B4–620, B4–622, C4–620	A300–76–6002, Revision 02, dated August 23, 2001.
A300 B4–620	A300–76–6003, Revision 04, dated February 26, 2002.
A300 B4–601, –603, and –605R	A300–76–6007, Revision 01, dated March 14, 2000.
A300 B4–601, B4–603, B4–605R, and C4–605R Variant F	A300–76–6009, Revision 02, dated October 29, 1999.
A310–203, –204, –221, and –222	A310–76–2001, Revision 01, dated March 14, 2000.
A310–203	A310–76–2004, Revision 03, dated August 23, 2001.
A310–203, –221, and –222	A310–76–2005, Revision 01, dated March 14, 2000.
A310–221, –222, and –322	A310–76–2006, Revision 03, dated February 26, 2002.
A310–204 and –304	A310–76–2010, Revision 03, dated August 23, 2001.
A310–203, –204, and –304	A310–76–2012, Revision 02, dated November 5, 2001.

Compliance: Required as indicated, unless accomplished previously.

To prevent hard points in the throttle control system that could lead to jamming of the throttle control cable, which could result in an asymmetric thrust condition and consequent reduced controllability of the airplane, accomplish the following:

Modifications

(a) Within 22 months after the effective date of this AD, do the actions specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this AD; as applicable.

(1) For airplanes listed in Airbus Service Bulletin A300–76–0007, Revision 06, dated August 23, 2001: Install a flexible ice protection boot on the upper fitting of the throttle and fuel shut-off valve control cables in each engine pylon, per the Accomplishment Instructions of that service bulletin.

(2) For airplanes listed in Airbus Service Bulletin A300–76–0015, Revision 02, dated August 23, 2001; or A310–76–2001, Revision 01, dated March 14, 2000: Install a heating system for the throttle control system in each engine pylon, per the Accomplishment Instructions of the applicable service bulletin.

(3) For airplanes listed in Airbus Service Bulletin A300–76–0016, Revision 03, dated August 23, 2001; A300–76–6002, Revision 02, dated August 23, 2001; or A310–76–2005, Revision 01, dated March 14, 2000: Replace, with new improved parts, the roller and rotation pin of the secondary relay lever of the throttle control system in each engine pylon. Accomplish the replacement per the Accomplishment Instructions of the applicable service bulletin.

(4) For airplanes listed in Airbus Service Bulletin A300–76–6007, Revision 01, dated March 14, 2000; or A310–76–2010, Revision

03, dated August 23, 2001. Install a new cooling duct and a new cooling shroud for the throttle control cable, per the instructions in the “Description” section of Airbus Service Bulletin A300–76–6007, Revision 01; or per the Accomplishment Instructions of A310–76–2010, Revision 03; as applicable.

Note 1: Airbus Service Bulletins A300–76–6007, Revision 01; and A310–76–2010, Revision 03; refer to GE CF6–80C2 Service Bulletins 71–088, Revision 03, dated March 15, 1991; and 75–021, Revision 03, dated August 5, 1992; for additional service information for accomplishing the installation of a new cooling duct and a new cooling shroud for the throttle control cable.

(5) For airplanes listed in Airbus Service Bulletin A300–76–6009, Revision 02, dated October 29, 1999; or A310–76–2012, Revision 02, dated November 5, 2001: Install an elastomer plug filled with grease on the end fitting of the throttle control cable in each engine pylon, per the Accomplishment Instructions of the applicable service bulletin.

(6) For airplanes listed in Airbus Service Bulletin A310–76–2004, Revision 03, dated August 23, 2001: Install a sealing sleeve (also called a sealing boot) on the flexible control ball joint of the throttle control cable in each engine pylon (including a detailed inspection for deterioration of the throttle control cable, and replacement of the throttle control cable, as applicable) by doing all actions in the Accomplishment Instructions of the service bulletin, per the Accomplishment Instructions of the service bulletin. Replacement of the throttle control cable, if required, must be accomplished before further flight.

Note 2: For the purposes of this AD, a detailed inspection is defined as: “An intensive visual examination of a specific

structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.”

Accomplishment of Required Actions per Previous Service Bulletin Revisions

(b) Actions accomplished before the effective date of this AD per previous service bulletin revisions are acceptable for compliance with paragraph (a) of this AD; as specified in paragraph (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this AD; as applicable.

(1) Accomplishment of the installation required by paragraph (a)(1) of this AD per Airbus Service Bulletin A300–76–007, Revision 05, dated March 14, 2000; is acceptable for compliance with paragraph (a)(1) of this AD.

(2) Accomplishment of the replacement required by paragraph (a)(2) of this AD per Airbus Service Bulletin A300–76–0015, Revision 01, dated March 14, 2000, is acceptable for compliance with paragraph (a)(2) of this AD.

(3) Accomplishment of the replacement required by paragraph (a)(3) of this AD per Airbus Service Bulletin A300–76–016, Revision 02, dated March 14, 2000; or A300–76–6002, Revision 01, dated March 14, 2000; as applicable; is acceptable for compliance with paragraph (a)(3) of this AD.

(4) Accomplishment of the installation required by paragraph (a)(4) of this AD per Airbus Service Bulletin A310–76–2010, Revision 02, dated March 14, 2000, is acceptable for compliance with paragraph (a)(4) of this AD.

(5) Accomplishment of the installation required by paragraph (a)(5) of this AD per Airbus Service Bulletin A300-76-6009, Revision 01, dated March 5, 1999; or A310-76-2012, Revision 01, dated March 5, 1999; as applicable; is acceptable for compliance with paragraph (a)(5) of this AD.

(6) Accomplishment of all actions required by paragraph (a)(6) of this AD (including a detailed inspection for deterioration of the throttle control cable, and replacement of the throttle control cable, as applicable) per Airbus Service Bulletin A310-76-2004, Revision 02, dated March 14, 2000, is acceptable for compliance with paragraph (a)(6) of this AD.

Repetitive Inspections and Corrective Actions if Necessary

(c) For airplanes listed in Airbus Service Bulletin A300-76-6003, Revision 04, dated February 26, 2002; or A310-76-2006, Revision 03, dated February 26, 2002: Within 500 flight hours after the effective date of this AD, do the inspections and corrective actions, as applicable, required by paragraphs (c)(1) and (c)(2) of this AD, according to the Accomplishment Instructions of the applicable service bulletin. Repeat the inspections and corrective actions, as applicable, thereafter at intervals not to exceed 2,000 flight hours, until paragraph (d) of this AD is accomplished. Although Airbus Service Bulletins A300-76-6003, Revision 04, and A310-76-2006, Revision 03, specify to submit certain information to the manufacturer, this AD does not include such a requirement.

(1) Perform a detailed inspection to detect discrepancies of the throttle control cable (also called the "push-pull" cable) and the rack-box connection in each engine pylon, especially in the area of the cable guide having part number 221-1325-501. Discrepancies include excessive wear, damage, chafing of the cable in the area of a cable guide, backlash outside limits specified in the service bulletin, or excessive play. If any discrepancy is found, before further flight, replace the throttle control cable or the rack-box, as applicable, per the applicable service bulletin.

(2) Perform a detailed inspection for wear or play of the power lever of the hydromechanical control in the area where the rack-box drive tang is installed in the power lever. If any wear or play is found, before further flight, tighten the drive tang expansion screw to take up play, per the applicable service bulletin.

Accomplishment of Required Actions per Previous Service Bulletin Revisions

(d) Inspections and corrective actions accomplished before the effective date of this AD per Airbus Service Bulletin A300-76-6003, Revision 02, dated June 5, 2000; or Revision 03, dated November 9, 2000; or A310-76-2006, Revision 02, dated June 5, 2000; as applicable; are acceptable for compliance with paragraph (c) of this AD.

Optional Terminating Action

(e) Replacement of the existing throttle control cable assembly with a new improved assembly, per the Accomplishment Instructions of Airbus Service Bulletin A300-

76-6004, Revision 01, dated October 11, 2000; or A310-76-2007, Revision 02, dated November 24, 1988; as applicable; constitutes terminating action for the repetitive inspections required by paragraph (c) of this AD.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001-072(B) R2, dated January 23, 2002.

Issued in Renton, Washington, on October 24, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-27323 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-168-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 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 McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 airplanes. This proposal would require installing shield assemblies for power feeder cables in the forward and aft lower cargo compartments, and installing an additional shield for the power feeder cable of the auxiliary power unit in the aft lower cargo compartment. This action is necessary to prevent a cable from chafing against an edge of a lightening hole, which could result in electrical arcing, and consequent smoke/fire in the lower cargo compartments. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 15, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-168-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-168-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5344; fax (562) 627-5210.

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-168-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-168-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of several incidents of migration of power feeder cable troughs on McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 airplanes. The migration occurred where cables pass through lightening holes into forward and aft lower cargo compartments. Investigation revealed that the cause of such migration is vibration. Migration of the trough could result in a cable chafing against an edge of a lightening hole, which could result in electrical arcing, and consequent smoke/fire in the lower cargo compartments.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions

to address the remaining identified unsafe conditions.

On April 14, 1994, the FAA issued AD 94-09-02, amendment 39-8890 (59 FR 18720, April 20, 1994). That AD requires inspecting the auxiliary power unit (APU) for power feeder cable damage, and repair of the cable if necessary; then modifying the cable installation. Those actions are required to eliminate a potential source of fire ignition from electrical shorting of the generator power feeder cable. That AD also requires inspecting previously modified airplanes to determine whether a spacer or "stand off" had been installed, and installing those items if necessary. Those actions are required to prevent the power feeder cable for the APU from chafing against adjacent structures, which could result in electrical shorting and arcing, and a fire below the cabin floor.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80-24A100, Revision 04, dated January 24, 2000, which describes procedures for installing shield assemblies for power feeder cables in the forward and aft lower cargo compartments, and installing an additional shield for the power feeder cable of the auxiliary power unit in the aft lower cargo compartment.

Accomplishment of the actions specified in the service bulletin will protect the power feeder cables from contact with the edge of a lightening hole when trough migration occurs, and is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 473 airplanes of the affected design in the worldwide fleet. The FAA estimates that 275 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed installation, and that the average labor rate is \$65 per work hour. Required parts would cost approximately between \$674 and \$3,656 per airplane. Based on these figures, the cost impact of the proposed installation on U.S. operators

of these airplanes is estimated to be between \$203,225 and \$1,023,275, or between \$739 and \$3,721 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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. The manufacturer may cover the cost of parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies also may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

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:

McDonnell Douglas: Docket 2000–NM–168–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD80–24A100, Revision 04, dated January 24, 2000; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a cable from chafing against an edge of a lightening hole, which could result in electrical arcing, and consequent smoke/fire in the lower cargo compartments, accomplish the following:

Installation

(a) Within 1 year after the effective date of this AD, install shield assemblies for power feeder cables in the forward and aft lower cargo compartments, and install an additional shield for the power feeder cable of the auxiliary power unit in the aft lower cargo compartment, per the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD80–24A100, Revision 04, dated January 24, 2000.

Installations Accomplished per Previous Issues of Service Bulletin

(b) Installations accomplished before the effective date of this AD per McDonnell Douglas Service Bulletin MD80–24–100, original issue, dated March 30, 1988, through Revision 3, dated March 15, 1991, are considered acceptable for compliance with the actions specified in paragraph (a) of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on October 24, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–27322 Filed 10–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–146–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require removing the two direct current (DC) over-voltage/feeder-fault test switches from the Test 2 Panel of the generator control unit, and follow-on actions. This action is necessary to prevent the loss of the DC generators, which could result in the loss of normal electrical power to the airplane and increased pilot workload. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 1, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–146–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain “Docket No. 2002–NM–146–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA,

Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; 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 2002–NM–146–AD.” The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–146–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab

Model SAAB SF340A, and SAAB 340B series airplanes. The LfV advises that it has received reports of the two direct current (DC) generators of the generator control unit (GCU) going off-line during a lightning strike, which could cause a malfunction of the DC over-voltage/feeder-fault test switches. This malfunction can momentarily inhibit the reset capability of the GCU and prevent the generators from coming back on-line. Loss of the DC generators could result in the loss of normal electrical power to the airplane and increased pilot workload.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340-24-023, Revision 02, dated November 15, 2001, which describes procedures for removing the two DC over-voltage/feeder-fault test switches from the Test 2 Panel of the GCU, and follow-on actions. The follow-on actions include modifying certain associated wiring, attaching related test function wiring to the wire harness, installing a blanking plate on the Test 2 Panel, and operational testing. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LfV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1-169, dated November 20, 2001, to ensure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LfV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LfV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 251 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 actions, and that the average labor rate is \$65 per work hour. Required parts would cost approximately \$107 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$92,117, or \$367 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 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:

SAAB Aircraft AB: Docket 2002-NM-146-AD.

Applicability: Model SAAB SF340A series airplanes having serial numbers 004 through 159 inclusive; and SAAB 340B series airplanes having serial numbers 160 through 379 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of the DC generators, which could result in the loss of normal electrical power to the airplane and increased pilot workload, accomplish the following:

Removal of DC Generator Test Switches

(a) Within 5,000 flight hours or two years after the effective date of this AD, whichever occurs later: Remove the two DC over-voltage/feeder-fault test switches from the Test 2 Panel of the generator control unit and do all the follow-on actions specified in the Accomplishment Instructions of Saab Service Bulletin 340-24-023, Revision 02, dated November 15, 2001. Do the actions per the service bulletin.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in Swedish airworthiness directive 1-169, dated November 20, 2001.

Issued in Renton, Washington, on October 24, 2003.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 03-27321 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 20]

RIN 1513-AA69

Proposed Establishment of the Salado Creek Viticultural Area (2003R-025P)**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the Salado Creek viticultural area in western Stanislaus County, California. Located near the town of Patterson, the proposed viticultural area covers 2,940 acres, with 44 acres currently planted to grapes. We propose this action under the authority of the Federal Alcohol Administration Act. We invite comments on this proposal, particularly from bottlers who use brand names similar to that of the proposed area.

DATES: We must receive written comments on or before December 29, 2003.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 20);
- 202-927-8525 (facsimile);
- nprm@ttb.gov (e-mail); or
- <http://www.ttb.gov> (An online comment form is posted with this notice on our Web site.)

You may view copies of this notice and any comments received at <http://www.ttb.gov/alcohol/rules/index.htm> or by appointment at our reference library, 1310 G Street, NW., Washington, DC 20005; telephone 202-927-8210 for an appointment. You may also access copies of the notice and comments on our Web site at <http://www.ttb.gov/alcohol/rules/index.htm>.

See the Public Participation section of this notice for specific instructions and requirements, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Specialist, Regulations and Procedures Division (Oregon), Alcohol and Tobacco Tax and Trade Bureau, 946 Northwest Circle Blvd., #286, Corvallis, OR 97330; telephone 415-271-1254.

SUPPLEMENTARY INFORMATION:**Background on Viticultural Areas***TTB Authority*

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions, and the Secretary has delegated this authority to the Alcohol and Tobacco Tax and Trade Bureau (TTB).

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural Areas, contains the list of approved viticultural areas.

Definition

Title 27 CFR 4.25(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundary has been delineated in subpart C of part 9. These designations allow consumers and vintners to attribute a given quality, reputation, or other characteristic of the wine made from grapes grown in an area to its geographic origin. We believe that the establishment of viticultural areas allows wineries to describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Establishment of a viticultural area is neither an approval nor endorsement by TTB of the wine produced there.

Requirements to Establish a Viticultural Area

Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition TTB to establish a grape-growing region as a viticultural area. The petition must include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence that the proposed area's growing conditions, such as climate, soils, elevation, physical features, etc., distinguish it from surrounding areas;
- A description of the proposed viticultural area's specific boundaries,

based on features found on maps approved by the United States Geological Survey (USGS); and

- A copy of the appropriate USGS-approved map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

As appellations of origin, viticultural area names have geographic significance. Our 27 CFR part 4 label regulations prohibit the use of a brand name with geographic significance on a wine unless the wine meets the appellation of origin requirements for the named area. Our regulations also prohibit any other label references that suggest an origin other than the true place of origin of the wine.

If we establish this proposed viticultural area, bottlers who use brand names, including trademarks, like Salado Creek must ensure that their existing products are eligible to use the viticultural area's name as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area, and the wine must meet the other requirements of 27 CFR 4.25(e)(3).

If the wine is not eligible for the appellation, the bottler must change the brand name or other label reference and obtain approval of a new label. Different rules apply to a wine in this category bearing a brand name that was used on a label approved prior to July 7, 1986. See 27 CFR 4.39(i) for details.

Salado Creek Petition

TTB has received a petition filed on behalf of Mr. Fred Vogel of the Sunflower Ranch Company in Patterson, California, proposing the establishment of the "Salado Creek" viticultural area in Stanislaus County, California. The proposed 2,940-acre area is located about 75 miles east-southeast of San Francisco and 18 miles southwest of Modesto in a rural area of central, interior California. The proposed area is located along Interstate 5 on the western edge of the San Joaquin Valley, just southwest of the town of Patterson. The Diablo Mountains rise to the west of the proposed area and shield it from the Pacific Ocean's marine influence. Salado Creek flows from the mountains through the area, while Little Salado Creek touches its southern tip.

Name Evidence

According to the petition, Spanish explorer Gabriel Moraga named Salado Creek. Moraga, a Spanish army officer, explored the San Joaquin Valley during his 1806-1811 expeditions to the San Joaquin Valley and named many of its

geographic features including the San Joaquin River. Many of those names remain in use today. The names "Salado" and "Salado Creek," for example, are attached to a variety of features and places, both natural and man-made.

As shown on the two official United States Geological Survey (USGS) maps that cover the proposed viticultural area, the Patterson and Crows Landing quadrangles, Salado Creek is an intermittent stream that flows east from the higher elevations of the Diablo Mountains. After passing under Interstate 5, Salado Creek turns and flows north through the proposed viticultural area. After leaving the proposed area, the creek runs west and north of Patterson.

The Patterson quadrangle map shows Little Salado Creek running east from the Diablo Mountains to the southern tip of the proposed viticultural area, where Interstate 5 and the California Aqueduct interrupt its natural channel. On the Crows Landing map, the creek is shown to resume southeast of the proposed area where it runs northeast from the Delta-Mendota Canal. The Salado Sub-Station is shown beside the California Aqueduct within the proposed area's boundaries.

The petition also notes that the Salado Creek Ranch, known for its walnuts, is within the proposed boundary area. It adds that Salado Avenue in Patterson is a major street that passes the town's post office, its branch library, a new school, and the city council's chambers. The petition also states that the local irrigation district was previously known as the Salado Irrigation District.

The petition explains that Salado Creek is best known to local residents for its floods. "Salado Creek History," an article published in "The Gateway: A Patterson Township History Society Bulletin" in December 1996, discusses the creek's significant floods. As noted in the article, the March 4, 1938, edition of the local Patterson Irrigator newspaper states that Salado Creek spilled over its banks and onto State Highway 33 on Patterson's east side. The article adds that a flood in November of 1938 spilled into a local nursery.

Boundary Evidence

The petitioner explains that water from Salado Creek and Little Salado Creek has deposited large quantities of sediment on the flood plain and formed an alluvial fan. Further, these sediments are the parent material for the Ensalado soil series, which the petition states are unique to western Stanislaus County. The petitioner emphasizes that the

proposed Salado Creek viticultural area boundaries, which are on this alluvial fan, generally coincide with the extent of the Ensalado soil series.

Growing Conditions

Topography

The proposed Salado Creek viticultural area lies on the western side of the San Joaquin Valley at the foot of the Diablo Mountains, which are part of California's Coast Range. The proposed area, which is between 125 and 340 feet above sea level as noted on the USGS maps, is generally flat, with a gentle downward slope to the northeast towards the San Joaquin River. A number of man-made canals, ditches, and drains cross the proposed viticultural area. The California Aqueduct and the Delta-Mendota Canal, for example, flow from the northwest to the southeast across the proposed Salado Creek viticultural area.

Salado Creek is the major natural watercourse in the proposed viticultural area. An intermittent stream, it begins in the Diablo Mountain Range to the area's west and runs east in its natural channel from the mountains to the California Aqueduct. After crossing the Aqueduct at the foot of the Diablos, the creek flows north and then northeasterly across the gently sloping floor of the San Joaquin Valley. After crossing the Delta-Mendota Canal in a flume, it enters a man-made channel that carries it north out of the proposed viticultural area and then east around the heart of Patterson. According to the petition, Salado Creek then enters large drainpipes at State Route 33, which take its water to the San Joaquin River.

Another intermittent stream, Little Salado Creek, starts in the Diablo range south of Salado Creek. It meanders east in its natural channel to the southern tip of the proposed boundary area at Interstate 5 and Fink Road. The creek then enters a series of man-made drains and channels as it flows northeast across the valley floor outside of the proposed area south of Patterson.

The petition states that the proposed area covers the upper portion and back slope of the alluvial fan created by Salado and Little Salado Creeks. The two creeks created the fan as they left the steep slopes of the Diablo Mountains and their flow velocity diminished as they entered the much gentler slopes of the San Joaquin Valley. This drop in velocity allowed the coarser, heavier sediments to settle out and formed the creeks' alluvial fan at the foot of the Diablos. The two streams carried finer, lighter sediments further downstream to the flood plain of the San Joaquin River.

The coarser, heavier sediments of the alluvial fan became the parent material for the Ensalado soils found in the proposed viticultural area.

Soils

The Ensalado series soils, formerly known as the Salado series, are unique to west Stanislaus County, California, according to a 2001 publication by soil scientist, vineyard consultant, and Salado Creek petition author Stan Grant. He further notes that this soil series occurs only along three streams in the area, Salado, Orestimba, and Del Puerto Creeks, and accounts for only 0.17 percent of the soils covering western Stanislaus County. Grant notes in the petition that because of their lower flow velocity, Salado Creek and Little Salado Creek dropped large quantities of sediment immediately after leaving the Diablo Mountains. This produced the large alluvial fan upon which the proposed viticultural area sits. The petition adds that Orestimba and Del Puerto Creeks, with their higher flow rates, took their sediments further to the east, producing smaller alluvial fans at the foot of the mountains.

The petition explains that the Ensalado soils are very deep, with a root depth of 60 inches or more. They are well drained, with parent material from sandstone and shale, and have little organic matter. The petition adds that they have little layer development due to the dry, warm climate, and are calcareous. The petition notes that the soils lack of layering results in soil properties that are generally consistent with depth, including water permeability and soil moisture. Classified as coarse-loamy, this soil generally consists of a thin layer of fine sandy loam over deep loam subsoil. According to the petition, other soils on the alluvial fan are older than the Ensalado soils and lie beyond the courses of Salado and Little Salado Creeks.

Climate

The proposed Salado Creek viticultural area lies on the west side of the San Joaquin Valley at the foot of the Diablo Mountain range. These Coast Range mountains shield the proposed viticultural area from the maritime influences of the Pacific Ocean. The petitioner states that the area is in a "thermal belt," which covers the alluvial fans found along the western rim of the valley in Stanislaus County. Consistent breezes from the north, which cool the area in the summer, characterize this thermal belt, according to the petition. It adds that in the winter, the thermal belt has less fog and

warmer temperatures than the valley's lower elevations along the San Joaquin River. The petition also notes that the thermal belt allows growers to raise citrus crops within it, but nowhere else in the northern San Joaquin Valley.

The petition included a recent comparison of weather information gathered from stations north, within, and south of the proposed viticultural area. The petition states that the proposed Salado Creek viticultural area has warmer minimum temperatures and cooler maximum temperatures, for a milder climate, than the surrounding areas. Minimum temperatures are higher in May, June, and August through October. Maximum temperatures are cooler August through December. These periods of comparatively mild temperatures correspond to the ripening season for wine grapes, according to the petitioner.

Solar radiation statistics collected by the petitioner in 2001 indicate less solar influence between August and October in the proposed viticultural area, creating a slower ripening period for the grapes. The petition also comments that the proposed area's low humidity, high average wind speeds, and high average solar radiation create a high rate of moisture evaporation from the area's plants and soil. The petition explains that this slow ripening, along with the continuing high rate of evaporation for plants and soil, have a positive effect on the quality of grapes grown in the area.

Boundary Description

The 2,940-acre proposed Salado Creek viticultural area is in western Stanislaus County, just southwest of the town of Patterson. It lies within a portion of a blunt-ended triangle formed by Interstate 5, Sperry Road, Davis Road, and Fink Road. The proposed area's boundaries are described in detail in the proposed regulation shown below.

Maps

The proposed boundaries of the Salado Creek viticultural area are shown on two USGS maps: the Patterson, California Quadrangle—Stanislaus Co., 7.5 Minute Series, edition of 1953; photorevised 1971, photoinspired 1978; and the Crows Landing, California Quadrangle—Stanislaus Co., 7.5 Minute Series, edition of 1952, photorevised 1980.

Public Participation

Comments Sought

We request comments from anyone interested. Please support your comments with specific information about the proposed area's name,

growing conditions, or boundaries. All comments must include your name and mailing address, reference this notice number, and be legible and written in language acceptable for public disclosure.

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

Confidentiality

We do not recognize any submitted material as confidential. All comments are part of the public record and subject to disclosure. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

Submitting Comments

You may submit comments in any of four ways:

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202-927-8525. Faxed comments must—
 - (1) Be on 8.5 by 11-inch paper;
 - (2) Contain a legible, written signature; and
 - (3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- *By e-mail:* You may e-mail comments to nprm@ttb.gov. Comments transmitted by electronic mail must—
 - (1) Contain your e-mail address;
 - (2) Reference this notice number on the subject line; and
 - (3) Be legible when printed on 8.5 by 11-inch paper.

• *By online form:* We provide a comment form with the online copy of this notice on our Web site at <http://www.ttb.gov/alcohol/rules/index.htm>. Select "Send comments via e-mail" under this notice number.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Disclosure

You may view copies of the petition, the proposed regulation, the appropriate maps, and any comments received by appointment in our reference library, 1310 G Street, NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5 x 11-inch page. Contact us at the above address or telephone 202-

927-8210 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and the comments received on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in our reference library. To access the online copy of this notice, visit <http://www.ttb.gov/alcohol/rules/index.htm> and select the "View Comments" link under this notice number to view the posted comments.

Regulatory Analyses and Notices

Paperwork Reduction Act

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

The principal author of this document is N.A. Sutton, Regulations and Procedures Division (Oregon), Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

For the reasons discussed in the preamble, we propose to amend Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

2. Subpart C is amended by adding § 9. ____ to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9. Salado Creek.

(a) The name of the viticultural area described in this section is “Salado Creek”.

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Salado Creek viticultural area are two 1:24,000 Scale USGS topographic maps. They are titled:

(1) Patterson, California Quadrangle,—Stanislaus Co., 7.5 Minute Series, edition of 1953; photorevised 1971, photoinspected 1978; and

(2) Crows Landing, California Quadrangle,—Stanislaus Co., 7.5 Minute Series, edition of 1952, photorevised 1980.

(c) *Boundaries.* The Salado Creek viticultural area is located in Stanislaus County, California, just southwest of the town of Patterson.

(1) Beginning on the Patterson Quadrangle map in section 19, T6S, R8E, at the junction of Fink Road and Interstate 5;

(2) Proceed northwest for 4.25 miles along Interstate Highway 5 to its junction with an unnamed light duty road in section 35, T5S, R7E (Patterson Quadrangle); then

(3) Following the unnamed light duty road for approximately 0.45 miles, go east across the California Aqueduct and then north, to the road's intersection with the light duty road atop the levee on the east bank of the Delta-Mendota Canal in section 35, T5S, R7E (Patterson Quadrangle); then

(4) Proceed southeast approximately 0.3 miles along the Delta-Mendota Canal levee road to its intersection with an unnamed unimproved road in section 35, T5S, R7E (Patterson Quadrangle); then

(5) Proceed north and then east on the unimproved road for approximately 0.4 mile to its intersection with Baldwin Road and continue east on Baldwin Road approximately one mile, crossing Salado Creek, to the road's intersection with Ward Avenue at the eastern boundary line of section 36, T5S, R7E (Patterson Quadrangle); then,

(6) Proceed north on Ward Avenue approximately 400 feet to its intersection with 2nd Lift drainage canal in section 31, T5S, R8E (Patterson Quadrangle); then

(7) Follow the 2nd Lift canal southeast approximately 0.75 miles to its intersection with Elfers Road in section 31, T5S, R8E (Patterson Quadrangle); then

(8) Proceed east on Elfers Road approximately for 0.45 miles, crossing onto the Crows Landing map, to its

intersection with an unnamed, unimproved road on the south side of Elfers Road that also marks the western boundary of section 6, T6S, R8E (Crows Landing Quadrangle); then

(9) Proceed straight south on the unimproved road approximately one mile to its intersection with Marshall Road in section 6, T6S, R8E (Crows Landing Quadrangle); then

(10) Follow Marshall Road straight west 1.1 miles, crossing onto the USGS Patterson map, to its intersection with Ward Avenue in section 6, T6S, R8E (Patterson Quadrangle); then

(11) Proceed south 1.65 miles on Ward Avenue to its intersection with the California Aqueduct, then continue generally south approximately 1.4 miles along the aqueduct to its intersection with Fink Road in section 19, T6S, R8E (Patterson Quadrangle); then

(12) Follow Fink Road northwest for approximately 0.5 miles, returning to the point of beginning at Interstate Highway 5 in section 19, T6S, R8E (Patterson Quadrangle).

Signed: September 25, 2003.

Arthur J. Libertucci,
Administrator.

[FR Doc. 03-27317 Filed 10-29-03; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05-03-132]

RIN 1625-AA08

Special Local Regulations for Marine Events; Spa Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: On October 10, 2003, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** that requested comments on a proposed temporary special local regulation during the “International Tug-of-War”, a marine event to be held November 8, 2003, over the waters of Spa Creek between Eastport and Annapolis, Maryland. This document contains a correction to the date in the Dates section of that notice of proposed rulemaking.

DATES: This correction is effective October 30, 2003. The comment period for the proposed temporary rule ends October 30, 2003.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398-6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398-6204.

SUPPLEMENTARY INFORMATION: On October 10, 2003, the Coast Guard published a notice of proposed rulemaking entitled “Special Local Regulations for Marine Events; Spa Creek, Annapolis, MD” in the **Federal Register** (68 FR 58640). While the preamble referred to a 20-day comment period (68 FR 58640) and the event was described as being scheduled for November 8, 2003 (68 FR 58641), the date in the Dates section reflected a 30-day comment period. That date must now be corrected to reflect that comments are due on or before October 30, 2003.

In the notice of proposed rulemaking FR Doc. 03-25680 published on October 10, 2003 (68 FR 58640), make the following correction:

On page 58640, in the third column, on line 6, correct “November 10” to read “October 30”.

Dated: October 17, 2003.

Ben R. Thomason, III,
Captain, Coast Guard, Acting Commander,
Fifth Coast Guard District.

[FR Doc. 03-27287 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1890-AA09

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend regulations governing the

process for submitting discretionary grant applications by removing current provisions requiring specific application formats, thereby permitting electronic submission of applications. The revisions will also clarify that only applicants submitting paper applications are required to submit one original and two copies of their application to the Department of Education (Department).

DATES: We must receive your comments on or before December 29, 2003.

ADDRESSES: Address all comments about these proposed regulations to Kevin Taylor, U.S. Department of Education, 400 Maryland Avenue, SW., room 3652, ROB-3, Washington, DC 20202-4248. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov.

You must include the term "Electronic Applications" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT:

Kevin Taylor. Telephone: (202) 708-8558 or via Internet:

Kevin.Taylor@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 these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3652, ROB-3, 7th and D Streets, SW., 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 these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105-227) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106-107) encourage Federal departments and agencies to take initiatives to improve their business processes. Conducting business over the Internet with applicants and grantees has been a major part of the Department's response to these Acts.

The Department published a notice in the **Federal Register** on March 5, 2001 (66 FR 13381-13383), announcing its intention to pilot an electronic application submission process. These proposed regulations are a follow-up to the Department's successful implementation of the pilot system to accept applications electronically via the Internet. The proposed regulations would remove the requirement that an application be mailed or hand delivered to the Department. The removal of this requirement would permit the Department to receive electronic applications without using the pilot as authority for electronic submissions.

Since fiscal year (FY) 2000, the Department has used its Grant Administration and Payment System (GAPS) to conduct the pilot project. The on-going pilot project involves the use of an Internet-based system that allows grant applicants to submit their applications electronically. During FY 2000, eight discretionary grant programs were included in the pilot. Based on the results of the first year, the Department found that completing and submitting an application using the Internet was an effective way for applicants to submit their applications to the Department. In FY 2001, grant applicants had the opportunity to submit their applications electronically to 33 program competitions, and this figure increased to 52 program competitions in FY 2002. For FY 2003, the Department used its electronic application system (e-Application) for over 80 grant competitions.

The Department has received over 6,800 electronic applications since the pilot project began. Online survey responses indicate that most applicants were pleased with their experience using the Department's Web site to apply for a grant. In fact, 90 percent of

respondents in FY 2001 and FY 2002 found the system easy to use and 95 percent said that they would use the system in future grant competitions.

The Department's electronic application system operates in conjunction with the current paper-based process. The Department announces in application notices and application packages when a particular grant program competition will accept applications electronically. Application packages and notices also include instructions for applicants that use the electronic application system that explain what to do if they are prevented from submitting their application by the closing date and time because the electronic application system is unavailable.

In addition to e-Application, the Department is working on a collaborative effort with 26 federal agencies to create a central Web site for federal funding opportunities. Visitors to the site can search for funding opportunities and, beginning in FY 2004, will be able to apply for a grant from the site. As the government-wide portal, *Grants.gov*, is fully implemented, each agency will increase over time the number of participating programs that applicants may apply for electronically in order to create a Federal-wide electronic grant application system.

The Department is currently using *Grants.gov* to post information on funding opportunities and is preparing to receive applications through the portal. These activities are part of an effort to consolidate and streamline grantmaking activities across the Federal Government to make it easier for the public to find and apply for Federal discretionary grants. The proposed regulations would increase the Department's flexibility to participate in these new electronic initiatives.

Under the new regulations, the Secretary could require an applicant to submit its application by the closing date and time as specified in the application notice for a grant program competition.

The proposed regulations would also clarify that only applicants submitting paper applications must submit one original and two copies of their application to the Department. Applicants submitting electronic applications would not be subject to § 75.109(a).

Significant Proposed Regulations

Section 75.102 Deadline Date for Applications

Current Regulations: The regulations in § 75.102 address only applications

that are either sent via mail, or are hand delivered. The regulations do not currently reflect the Department's ability to accept electronic grant applications.

Proposed Regulations: Proposed § 75.102(a) and (b) would give the Secretary discretion to establish, in the Application Notice for a competition, the method for submitting an application to the Department. Paragraph (d) would be amended to limit its coverage to competitions that require applicants to send their paper applications to the Department by the deadline date specified in the application notice.

Reasons: The current regulations do not reflect the existing electronic application process. These proposed regulations would permit the Department to establish the method of applying for a grant in the application notice. These methods would include submissions of grant applications via an electronic application system designated by the Department. These provisions are aligned with the President's "e-Gov" initiatives for providing electronic services to the public and with current government-wide initiatives to enhance the public's access to information and to provide "one-stop shopping" for grants.

Section 75.109 Changes to Application; Number of Copies

Current Regulations: Section 75.109(a) currently requires that an applicant submit an original and two copies of its application to the Department.

Proposed Regulations: Proposed § 75.109(a) would clarify that applicants submitting electronic applications would not be required to submit more than one application to the Department.

Reasons: The proposed changes to this section are needed to make clear that only applicants submitting paper applications are required to send one original and two copies of their application to the Department.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action,

we have determined that the benefits would justify the costs.

Summary of potential costs and benefits. These regulations establish an option for submitting applications and should not result in any additional costs for applicants. Elsewhere in this preamble, under the heading Significant Proposed Regulations, we discuss the potential costs and benefits of these proposed regulations.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 75.102 *Deadline date for applications*.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are those that are applicants for Department grant programs, such as small local educational agencies (LEAs), non-profit organizations—including faith-based organizations, Indian tribal governments, and certain two- and four-year colleges. However, the regulations would not have a significant economic impact on these small entities because

the regulations only permit additional ways for these entities to submit an application.

The proposed regulations would benefit both small and large entities by giving them additional possible options for submission of grant applications, including the ability to apply for a grant electronically via the Internet. Thus, both would experience a positive impact as a result of these proposed regulations.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

These proposed regulations affect direct grant programs that are 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 to strengthen 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 these programs.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/news/fedregister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 75

Administrative practice and procedure, Education Department, Grant programs—education, Grant administration, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

Dated: October 24, 2003.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 75 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C 1221e-3 and 3474, unless otherwise noted.

2. Section 75.102 is amended by revising paragraphs (a) and (b), and the introductory text in paragraph (d) to read as follows:

§ 75.102 Deadline date for applications.

(a) The application notice for a program sets a deadline date for the transmittal of applications to the Department.

(b) If an applicant wants a new grant, the applicant must submit an application in accordance with the requirements in the application notice.

* * * * *

(d) If the Secretary provides that a paper application must be sent by the deadline date, an applicant must show one of the following as proof of mailing:

* * * * *

3. Section 75.109 is amended by revising paragraph (a) to read as follows:

§ 75.109 Changes to application; number of copies.

(a) Each applicant that submits a paper application shall submit an original and two copies to the Department, including any information that the applicant supplies voluntarily.

* * * * *

[FR Doc. 03-27376 Filed 10-29-03; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA284-0407b; FRL-7577-2]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Bay Area Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent and surface cleaning operations during large appliance and metal furniture coating, miscellaneous metal parts coating, plastic parts and products coating, and marine vessel coating. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by December 1, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or e-mail to steckel.andrew@epa.gov.

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and, Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

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

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947-4111, or e-mail at wamsley.jerry@epa.gov.

SUPPLEMENTARY INFORMATION: This proposal addresses the following BAAQMD rules: Rule 8-14, Surface Preparation and Coating of Large Appliances and Metal Furniture; Rule

8-19, Surface Preparation and Coating of Miscellaneous Metal Parts and Products; Rule 8-31, Surface Preparation and Coating of Plastic Parts and Products; and Rule 8-43, Surface Preparation and Coating of Marine Vessels. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: October 6, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 03-27268 Filed 10-29-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[MO 196-1196; FRL-7580-4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP) which limits emissions of volatile organic compounds from lithographic printing facilities in the Kansas City, Missouri, area. This revision provides a correction and clarification to the applicability portion of the rule, and also reorganizes the rule into the state's standardized rule format.

Approval of this revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the revised state rule.

DATES: Comments on this proposed action must be received in writing by December 1, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to kaiser.wayne@epa.gov, or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in "What action is EPA taking" in the **SUPPLEMENTARY INFORMATION** section of the direct final rule which is located in the rules section of the **Federal Register**.

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

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: October 17, 2003.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 03-27262 Filed 10-29-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7579-2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Del Monte Corporation (Oahu Plantation) Superfund Site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency ("EPA") Region IX announces its intent to delete the Poamoho Section of the Del Monte Corporation Superfund Site ("the site"), located in Oahu, Hawaii, from the National Priorities List ("NPL") and requests public comment on this proposed action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") of 1980, as amended. The remaining portion of the site will remain on the NPL. EPA and the State of Hawaii Department of Health have determined that, based on the Remedial Investigation, taking remedial measures on the Poamoho Section of the site would not be appropriate. The Remedial Investigation results indicate no response action is necessary to protect human health, welfare or the environment related to hazardous substances released on the Poamoho Section.

DATES: Comments concerning the proposed partial deletion of the Site from the NPL may be submitted on or before December 1, 2003.

ADDRESSES: Comments may be mailed to Janet Rosati, USEPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Mail Code SFD-8-2, (415) 972-3165 or (800) 231-3075.

Information Repositories: Comprehensive information on the Poamoho Section as well as information specific to this proposed partial deletion is available through the Region IX public docket which is available for viewing by appointment only. Appointments for copies of the background information from the Regional public docket should be directed to the EPA Region 9 docket office at the following address:

Superfund Records Center, USEPA Region 9, 95 Hawthorne Street, San Francisco, CA. The Record Center's hours of operation are 8 a.m.-5 p.m., Monday-Friday, and the Records Center staff can be reached at (415) 536-2000. Another information repository where the public docket is available for public review is the Wahiawa Public Library, 820 California Avenue, Wahiawa, HI 96786.

FOR FURTHER INFORMATION CONTACT: Janet Rosati, (415) 972-3165.

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I. Introduction

The U.S. EPA Region IX announces its intent to delete the Poamoho Section of the Del Monte Corporation Superfund Site, located in Oahu, Hawaii, from the National Priorities List ("NPL"), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, and requests public comment on this proposed action. EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of these sites. EPA and the State of Hawaii Department of Health have determined, based on the Remedial Investigation, taking remedial measures on the Poamoho Section would not be appropriate. The Remedial Investigation results indicate no response action is necessary to protect human health, welfare or the environment related to hazardous substances released on the Poamoho Section.

EPA will accept comments on the proposal to partially delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures EPA is using for this action. Section IV discusses the Poamoho Section of the site and explains how this section meets the partial deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(1), sites may be deleted from the NPL where no further response is appropriate to protect human health or the environment. In making such a determination pursuant to

§ 300.425(e)(1), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i): Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii): All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii): The remedial investigation has shown that the release poses no significant threat to human health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede Agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

The following procedures were used for the proposed deletion of the Poamoho lands at the site:

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The State of Hawaii, through the Hawaii Department of Health, concurs with this partial deletion.

(3) Concurrent with this national Notice of Intent for Partial Deletion, a notice has been published in a newspaper of record and has been distributed to appropriate federal, state and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and a newspaper of record.

(4) EPA has made all relevant documents available at the information repositories previously listed.

This **Federal Register** document, and a concurrent notice in a newspaper of record, announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete the Poamoho Section from the NPL. All critical documents needed to evaluate EPA's decision are included in the deletion docket and are available for review at the EPA Region IX information repositories.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously. Members of the public are encouraged to contact EPA Region IX to obtain a copy of the Responsiveness Summary. If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the Poamoho Section does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of the Poamoho Section from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

Site Background and History

The Site is an active pineapple plantation that consists of two major sections, known as Kunia and Poamoho. The Kunia Section is located in the general vicinity of the Kunia Well, a public water supply well. The Poamoho Section is geographically separated from the Kunia Section by Schofield Army Barracks, a site formerly on the NPL which was deleted in 2000 and Wheeler Field. The southern and northern boundaries of the Poamoho Section are located 3 miles south and 4.5 miles north, respectively, of the Kunia Well. The Poamoho Section is bounded by Wahiawa Reservoir (Lake Wilson) to the south, Kaukonahua Gulch to the east and Poamoho Gulch to the north. State Highways 80, 82 and 99 cross the Poamoho Section.

In April 1977, there was a spill of approximately 495 gallons of ethylene

dibromide ("EDB") within 60 feet of the Kunia Well, which was, at that time, used as a source of drinking water.

Additionally, EDB and other pesticides and fumigants, including 1, 2-Dibromo-3-chloropropane ("DBCP"), are known to have been stored in the same general vicinity. The Kunia Well was sampled one week after the spill, and EDB was not detected. The Kunia Well was sampled again in 1980, and EDB and DBCP were detected above safe drinking water standards. The Kunia Well was immediately disconnected from the drinking water supply system. In December 1994, EPA listed the site on the NPL primarily because of concerns with contamination to groundwater, which is a source of drinking water.

On September 28, 1995, Del Monte Fresh Produce ("DMFP") entered into an administrative order on consent ("AOC") with EPA. Under the AOC, DMFP prepared and EPA approved the Remedial Investigation and Feasibility Study ("RI/FS") Work Plan. The RI/FS Work Plan included plans to investigate two potential sources of concern on the Poamoho Section: a former fumigant drum burial site ("drum site") and a closed underground storage tank site ("tank site").

In the early 1970s, empty soil fumigant drums were buried behind an area known as the Poamoho Crater. Soil samples were collected at three locations within the burial area which measured 25 feet by 65 feet. Samples were collected at varying depths directly beneath the buried material. Soil analysis demonstrated that no EDB, DBCP or other chemicals of potential concern ("COPCs") associated with fumigant drum burial were present in the soils. Heptachlor at 2.3 micrograms per kilogram ("µg/kg") was detected in one sample at 12 to 14 feet below ground surface (bgs). This level is well below EPA's residential health-based guideline for heptachlor of 99 µg/kg. A soil gas sample was also collected from each of the three sampling locations at the base of the buried debris. The compounds detected in soil gas were low and do not represent a risk to human health or the environment. Because soil gas vapors can migrate to ground surface and disperse into the air, an analysis was conducted to estimate the potential health risk from inhalation. The analysis showed that the levels of chemicals in the air that people might breathe were far lower than EPA's health-based guidelines. The soil gas and soil concentrations do not pose a risk to groundwater due to the low concentrations detected and the great depth to the aquifer (600—700 feet bgs).

In 1987, DMFP removed two 6,000 gallon steel underground fuel storage tanks ("USTs") that previously contained either diesel fuel or gasoline. In March 1997, soil beneath the two former USTs was sampled. The samples were analyzed for petroleum and associated constituents. No petroleum or associated constituents were detected in these samples.

Further information regarding the investigations conducted at the drum burial area and the underground storage tank area can be found in the November 1998 Remedial Investigation Report.

In August 2002 DMFP informed EPA of two additional Other Potential Source Areas recently identified to them by a retired Del Monte Corporation employee. The areas are the Former Fumigant Mixing Area near the Karsten Warehouse and the Rag Disposal Area near the southern end of Field 202A. The former fumigant mixing area near the Karsten warehouse was used during the late 1950s and early 1970s for mixing of previously registered soil fumigants with diesel fuel. The soil fumigants included EDB and possibly Shell DD (a mixture of 1,2-dichloropropane, 1,3-dichloropropane, 2,3-dichloropropane, 3,3-dichloropropane and traces of trichloropropane). Occasionally, mixing operations in this area resulted in spills of EDB onto the soil. Rags used to wipe down the fumigant drums were discarded in the Rag Disposal Area which was a debris disposal and burn area operated by the City and County of Honolulu. Soil samples were collected in these newly identified areas in September and October 2002.

The boundary of the Former Fumigant Mixing Area measures approximately 30 feet by 45 feet. Soil samples were collected at varying depths within this area and analyzed for volatile organic compounds (VOCs). The only compound detected in any of the samples at a concentration greater than the EPA's residential health-based guideline was 1,2,3-trichloropropane (TCP). TCP was detected at 10 micrograms per kilogram ($\mu\text{g}/\text{kg}$) at 15 feet bgs. EPA's residential health-based guideline for TCP is 5 $\mu\text{g}/\text{kg}$. Additional sampling at depths below 15 feet was conducted in February 2003 to determine the extent of TCP. The highest level detected was 4.4 $\mu\text{g}/\text{kg}$. Since soils shallower than 5 feet did not contain TCP at concentrations above residential health-based guidelines, risks via skin contact, ingestion, inhalation, dust entrainment or surface runoff should not be present. The limited extent and relatively low concentrations of TCP, and the

extensive depth to groundwater (approximately 700 feet) indicate that risks to groundwater from soil leaching are not applicable.

Sixteen test pits were dug to identify the boundaries of the refuse disposal and burn site where rags used to wipe down fumigant drums were discarded. The test pits identified an oblong area approximately 100 feet wide by 130 feet long at the top edge of a natural gulch. The burn debris consisted of broken glass, ash, and traces of burned metal mixed with soil. The type and construction of the glass bottles found within the burn debris indicated that the debris likely originated during the time frame when the DMC employee indicated rags were discarded in the area. The age of the burn debris, combined with the location, indicate that the burn debris material represents the Rag Disposal Area.

Sampling at the Rag Disposal Area differed from the Former Fumigant Mixing Area, because the depth of the debris was unknown, and most critical samples would be the soil samples beneath the disposal area. The base of the debris would be the most likely area for potential accumulation of chemicals due to their downward migration through the unconsolidated debris. Soil core samples were collected within the debris until the underlying soil was encountered. Soil samples were collected from the soil immediately beneath the debris and approximately 3 to 5 feet beneath the bottom of the debris.

The drilling indicated that the burn debris is fairly consistent in composition and varied in depth relative to distance from the gulch. The closer to the gulch, the deeper the burn debris. Debris was detected as deep as 57 feet in one sample. A total of 19 soil samples were collected in the Rag Disposal Area and analyzed for VOCs. Six of these samples were also analyzed for TPH-diesel and Lindane, Toxaphene and Heptachlor. No compounds were detected at concentrations above EPA's residential health-based guidelines.

Further information regarding the investigations conducted at the Former Fumigant Mixing Area and the Rag Disposal Area can be found in the March 2003 Investigation Results for Additional Other Potential Source Areas.

Community Relations Activities

EPA mailed fact sheets to farm workers, nearby residents and other interested parties throughout the Remedial Investigation and Feasibility Study phases. EPA also conducted public meetings on April 30, 1997 and

January 27, 1999 which were well attended.

During the Remedial Investigation phase of the project, community interest in the site was high due to health concerns in the Village Park subdivision 5 miles south of the Del Monte site. The residents were concerned that their drinking water supply may have been contaminated by the Del Monte spill and their subdivision may have been built on contaminated soil transported to the subdivision when Del Monte excavated contaminated soil in the Kunia Village area. The Remedial Investigation found that Del Monte's Kunia Camp well is in a different aquifer than the drinking water wells that serve Village Park. An EPA civil investigator examined the Village Park construction records. The construction contractor's Soils Reports for the subdivision states that fill material used in Village Park came from the subdivision itself. In addition, EPA collected soil samples from the on-site field where Del Monte's records showed the excavated Kunia Village area soil was spread. The soil in the field matched the soil from the excavation area. Community interest in the site has subsided since these findings were discussed with the public through fact sheets and community meetings. Very few community members attended the April 2, 2003 Public Hearing on the Proposed Plan for cleanup of the Kunia Section.

Current Status

EPA has determined that there are two zones of contaminated groundwater at the Kunia Section; the basal (deep) aquifer, which is approximately 800 feet bgs and the perched (shallow) aquifer which is approximately 100 feet bgs. In the Poamoho Section, basal groundwater is approximately 600–700 feet bgs and no perched groundwater was encountered. The basal aquifer flows south. While the perched aquifer flows north, it is a small and localized groundwater body in the immediate vicinity of the Kunia Well. Since the Poamoho Section is located several miles north of the Kunia Well, EPA does not anticipate that groundwater contamination will migrate to the Poamoho Section.

EPA has determined the Poamoho Section is not a source of release that poses a potential threat to human health or the environment. Further, because the deep aquifer beneath the Poamoho Section is upgradient of the Kunia Well, the groundwater contamination in the vicinity of the well has not migrated to it, and is not expected to do so. Therefore, EPA proposes to delete the

Poamoho Section of the site from the NPL. The Kunia Section will remain on the NPL and is not the subject of this partial deletion. A Record of Decision (ROD) describing the selected cleanup plan for the Kunia Section was signed on September 25, 2003.

In a letter dated June 19, 2003, the State of Hawaii through its Department of Health, concurred with EPA's decision to delete the Poamoho Section of the site.

Dated: October 16, 2003.

Debra Jordan,

Acting Regional Administrator, Region 9.

[FR Doc. 03-27161 Filed 10-29-03; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 67 and 68

[USCG 2001-10048]

Vessel Documentation: "Sold Foreign"

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Coast Guard withdraws the proposed rule published on September 12, 2001, in which we sought comments on our interpretation of the term "sold foreign," which may disqualify certain vessels whose ownership has become "foreign" in technical ways from eligibility for coastwise trade. While some affected parties claimed that this interpretation imposes a harsh penalty for slight, often unintended involvement, others feel that it just preserves the privilege of coastwise trade for the domestic fleet.

DATES: The proposed rule is withdrawn as of October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Willis, Director, National Vessel Documentation Center, telephone 304-271-2506.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2001, we published a request for comments notice in the *Federal Register* (66 FR 47431), inviting comments on how to interpret the term "sold foreign". We received ten comments. After review of these comments, we decided not to take any further action.

Discussion of Comments

The request for comments posed several specific questions:

1. Should the Coast Guard issue a formal letter-ruling addressing the proposed reorganization of a business entity before the entity undertakes the reorganization?

2. a. If a qualified owner sells a vessel to an owner unqualified because foreign, should the unqualified owner be able to cure the defect through its own reorganization?

b. Should the Coast Guard count as accomplishing a "sale" the reorganization of an owner that, until the reorganization, qualified to document vessels in accordance with 46 U.S.C. 12102? If so, should the owner be able to cure the defect through a second reorganization?

c. If a business entity can reorganize to satisfy 46 U.S.C. 12102, so as to avoid a permanent loss of the privilege of coastwise trade, should a vessel sold to a natural person other than a citizen be able to regain the privilege upon the naturalization of that person?

3. Should there be a time by which the reorganization posited in paragraph 2.a, the second reorganization posited in paragraph 2.b, or the naturalization posited in paragraph 2.c must either start or finish?

We received six comments from maritime-industry associations representing a large number of U.S. owners and operators, three comments from vessel owners, and one joint comment from two law firms. All six associations opposed any change in the Coast Guard's current rule. They also opposed allowing reorganizations to cure defects after the fact, pointing out that affected vessel owners may seek legislative redress in a process that allows a public venue to evaluate the appropriate action to take. Two of the vessel owners, both eligible to own and operate coastwise-qualified vessels, affirmed their support for the associations; the third, which qualifies to document vessels, though not for purposes of coastwise trade, proposed an unrestricted right of cure when there is no accompanying transfer of flag.

The joint comment from the two law firms opposes the current Coast Guard interpretation and petitions for rulemaking. The Coast Guard notes, however, that that comment in part mischaracterizes its rules. For example, the comment states that these rules permanently bar a vessel from coastwise privileges if sold to an owner that is not "both a U.S. citizen and a person permitted to document vessels pursuant to 46 CFR 68." In fact, the rules provide for loss of coastwise privileges under two circumstances: (1) the vessel is being sold to a person who is not a U.S. citizen eligible for full coastwise

privileges (or, if the more limited coastwise privileges for a vessel operating under the Bowaters amendment or as an oil spill response vessel, to a person who is not qualified under the applicable statutes); or (2) the vessel is being sold to a person not permitted to document vessels pursuant to 46 U.S.C. 12102, and 46 CFR part 68. However, permanent loss of coastwise privileges results only if the vessel is sold to a person not eligible to document vessels. The comment also states that these rules fail to include vessels financed under 46 U.S.C. 12106(e) as vessels which would not be deemed sold foreign. Because vessels financed under 46 U.S.C. 12106(e) must be owned by persons eligible to document vessels under 46 U.S.C. 12102, the Coast Guard does not understand the comment.

The joint comment also petitions for a rulemaking on the grounds that 46 CFR 67.19(d) directly contradicts the plain language of the Bowaters amendment in 46 U.S.C. app. 883-1, creating a limited privilege to engage in coastwise trade. The Coast Guard disagrees that 46 CFR 67.19(d) contradicts the Bowaters privilege. The comment in this regard appears to assume that 46 CFR 67.19(d) requires U.S. "citizenship" (by which it apparently means that the vessel must also be fully coastwise-qualified) and that it be qualified pursuant to the Bowaters amendment. However, this is not true. The Coast Guard holds that the vessel must (1) be eligible for documentation, that is, the corporation owning it must be qualified as a U.S. documentation citizen pursuant to 46 U.S.C. 12102, as implemented by 46 CFR 67.39(a), and (2) either meet the requirements of the Bowaters amendment pursuant to a certificate's so stating and having been filed with the Coast Guard pursuant to 46 CFR 67.39(d) (in which case it will qualify for a Bowaters coastwise endorsement), or meet the requirements specified in 46 CFR Subpart 68.05 (in which case it will qualify for a limited coastwise endorsement to engage in oil-spill cleanup and training). By confusing these two separate and distinct requirements, this comment has misstated the Coast Guard's position. It cites *Conoco v. Skinner*, 970 F.2d 1206 (DC Cir. 1992), in support of its position. However, a close reading of that case reveals that it does not support that position. Rather, the case (1) upholds the Coast Guard rules at issue as reasonable exercises of discretion committed to agencies (here, the Coast Guard and the Maritime

Administration), by Congress, and (2), more importantly, in the context of the issue at hand, does not deem invalid the regulatory requirement to qualify, that the corporate citizen must be a fully qualified documentation citizen as well as possess one of the two attributes (qualify pursuant to the Bowaters amendment or ownership by U.S. citizens of a minimum of 75 percent at every level in the entire chain of corporate ownership).

The joint comment also contends that 46 CFR 67.19(d) should be revised to "return to the original intent and to permit the correction of technical defects in citizenship." It asserts that the requirement that a U.S. citizen be chairman of the board or hold an equivalent position is such a "technical defect", relying, in part, on an Opinion Memo 16713 of the Coast Guard dated 8 April 1980 ("the G-LMI memo"). Of course, whether to change some 35 years of policy strictly applying the literal terms of the statute in respect of the requirements of the "sold foreign" provision in Section 27 of the Shipping Act of 1916 was, indeed, the purpose of the request for comments that preceded this notice. But the Coast Guard disagreed in 1980 when the G-LMI memo was issued, and it disagrees today, that the law required the Coast Guard to change its policy. Rather, the Coast Guard believes now, just as it did then, that it has the discretion, notwithstanding the conclusions in the G-LMI memo, to apply the law strictly (as it had up to the point of publishing the request for comments on a possible change to that policy). It may be helpful in explaining this position to recount some of the legislative history of the Jones Act and some of the cabotage principles on which that law is based.

Congress entrusted the Coast Guard with the responsibility, under 46 U.S.C. Chapter 121, to administer the vessel documentation laws consistently with the Jones Act, 46 U.S.C. app. 802, 808, and 883 and 46 U.S.C. 12106. The Coast Guard has held this responsibility continuously since 1967. We have historically implemented those laws with due regard to the important cabotage principles embodied in the Jones Act. We have endeavored in the past, as we do now, to carry out those principles as expressed by Congress in the Act itself and its legislative history, as well as in the lease-financing amendment and its legislative history.

We are aware of the Congressional purpose of that Act, as explained on the floor of the House at the time of discussions on who could be a U.S. citizen for purposes of owning and operating a vessel in the U.S. coastwise

trade. That purpose was expressed by Congressman Saunders, as follows:

The amendment [to Section 2 of the Shipping Act] intends to make it impossible for any arrangement to be effected by which such a corporation, partnership or association shall be a citizen of the United States when the real control of same is in the hands of aliens. We have sought to make the language so sweeping and comprehensive that no lawyer, however ingenious, would be able to work out any device under this section to keep the letter, while breaking the spirit of the law. [See 56 Cong. Rec. 8029 (June 19, 1918).]

None of the comments suggests that the Coast Guard lacks authority to amend its rules to adopt a more relaxed interpretation of the term "sold foreign" so as to allow a vessel purchaser to cure the so-called "technical defects" specified in the G-LMI memo, or to overcome those defects by reorganizing. Indeed, the Coast Guard has never doubted that Congress vested it with discretion to adopt a more liberal definition of that term.

Congress has apparently acceded to the Coast Guard's approach of strictly applying the requirements of the statute in interpreting the term "sold foreign". It has, on several occasions, granted limited legislative relief from what it perceived as the harsh results of the Coast Guard's strict interpretation in the case of individual vessels. It is noteworthy, in this regard, that rather than change the legislative scheme generally, or instructing the Coast Guard to adopt a more liberal approach, it has chosen to act only in the cases of individual vessels when it thought relief was warranted. Pub. L. 105-383, Section 403, is one example of such relief. In that law, Congress granted Bowaters coastwise privileges to vessels acquired by a company before it applied for, and was granted, a Bowaters certificate. Congress recognized that the vessels did not qualify under the Coast Guard's strict interpretation. They had not been acquired after the company obtained the necessary Bowaters certificate. Nevertheless, Congress granted Bowaters privileges to the vessels individually; but, significantly, it neither changed the underlying statute nor directed that the Coast Guard cease applying the statute strictly.

The joint comment argues that qualification for Bowaters privileges exists irrespective of the filing of an application together with its attestation that the applicant qualifies. According to the comment, the filing of the application together with its attestation is a mere formality or "technicality"

that is not a necessary pre-requisite to the qualification for Bowaters privileges. The issue is important because, if this view prevailed, a corporation could qualify its existing owned vessels, when it got around to filing the application together with its attestation—not just qualify newly acquired vessels after the application and the issuance of the qualification certificate. After considering all comments, and notwithstanding the G-LMI memo, the Coast Guard believes that the problems of administering a documentation regime that allows persons who are not documentation citizens to "correct" their citizenship defects, and thereby "cure" those defects so as to be able to own and operate coastwise-qualified vessels, could act only on ad hoc, or case-by-case, determinations of what factual patterns would qualify. Such a regime does not lend itself to a statement of objective criteria in advance that would govern all such determinations.

Such a regime would, in turn, inevitably lead to inconsistent results, to an increasingly burdensome and resource intensive-process, and ultimately to an administrative quagmire that would be worse than whatever perceived problems the current strict interpretation presents. Even the comments that support a more "flexible" or liberal policy and advocate revising the rules to incorporate such a policy acknowledge that it would result in corporate citizens' being treated differently in this respect from natural persons. Thus, they admit that a foreign natural person's vessel could never qualify for coastwise privileges, including the limited Bowaters privileges, because of Section 27. If that same person became a naturalized citizen, the vessel, owned by that person while an alien, could never qualify for coastwise privileges (even Bowaters exception privileges), whereas once that alien becomes a naturalized citizen any U.S.-built, coastwise-qualified vessel (s)he acquired after the naturalization would continue to be fully coastwise-qualified.

Termination

After review of all of the comments, the Coast Guard has concluded that it is inappropriate to change its current interpretation of the term "sold foreign" and has decided to terminate this project. The Coast Guard agrees with industry representatives that adopting procedures allowing entities to cure citizenship problems after the sales would contravene the cabotage principles upon which the Jones Act rests, and that owners of affected vessels

should seek redress through the legislative process. The Coast Guard believes that this approach best effectuates the intent of Congress and the expectations and needs of maritime commerce.

Dated: October 27, 2003.

L. L. Hereth,

Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03-27464 Filed 10-28-03; 1:07 pm]

BILLING CODE 4910-15-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-2982; MB Docket No. 03-163, RM-10734]

Radio Broadcasting Services; Fortuna Foothills and Wellton, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division dismisses a Petition for Rule Making filed by Dana J. Puopolo, requesting the allotment of Channel 240A to Fortuna Foothills, Arizona, as that community's first local aural transmission service. In order to accommodate this allotment, the petition for rule making also proposed the substitution of Channel 248A for vacant Channel 240A at Wellton, Arizona. *See* 68 FR 43705, July 24, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 03-163, adopted October 1, 2003, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-27368 Filed 10-29-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-2893, MB Docket No. 03-207, RM-10769]

Television Broadcast Service; Osage Beach, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Timothy D. Lischwe requesting the allotment of channel 49+ to Osage Beach, Missouri. TV Channel 49+ can be allotted to Osage Beach at reference coordinates 38-17-33 N. and 92-34-24 W.

DATES: Comments must be filed on or before November 17, 2003, and reply comments on or before December 2, 2003.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's

Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Aaron P. Shainis, Shainis & Peltzman, Chartered, 1850 M Street, NW., Suite 240, Washington, DC 20036 (Counsel for Timothy D. Lischwe).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03-207, adopted September 16, 2003, and released September 24, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

\$ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Missouri, is amended by adding Osage Beach, channel 49+.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03-27367 Filed 10-29-03; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 68, No. 210

Thursday, October 30, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCTIC RESEARCH COMMISSION

Sunshine Act Meeting

October 17, 2003.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 70th Meeting in Washington, DC on November 18th, 19th and 20th, 2003. The November 18th session will be a half-day, afternoon session (joint with the NAS/NRC Polar Research Board). On the 19th and 20th the Commission will meet for the full day. The Business Session open to the public will convene at 1 p.m. Tuesday, November 18th and will reconvene at 9 a.m. Wednesday. The Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 69th Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of common research interests with the Polar Research Board.

The Business Session will reconvene at 9 a.m. Thursday, November 20th, 2003. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

The Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, Phone 703-525-0111, e-mail g.brass@arctic.gov or TDD 703-306-0090. Please visit the Commission's

Web Site at <http://www.arctic.gov> for more information.

Garrett W. Brass,

Executive Director.

[FR Doc. 03-27475 Filed 10-28-03; 12:23 pm]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 29-2003]

Wacker Chemical Corporation— Application for Subzone Status; Amendment of Application and Extension of Comment Period

The application for subzone status at the Wacker Chemical Corporation in Adrian, Michigan, submitted by the Greater Detroit Foreign-Trade Zone, Inc. (68 FR 38009, 6/26/03), has been amended. The company is amending the application to add masterbatch materials and a compound plasticizer to the finished product list (HTS 3204.14, 3204.17 and 3812.30, duty rate ranges from duty-free to 7.8%).

The comment period for the case referenced above is being extended to November 26, 2003, to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15 day period, until December 11, 2003. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW, Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW, Washington, DC 20230.

Dated: October 20, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03-27380 Filed 10-29-03; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Open Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on November 18, 2003, 9:30 a.m., at the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

1. Opening remarks and introductions.
2. Election of Chairman.
3. Review of Wassenaar Arrangement and Technical Working Group issues.
4. Review of Missile Technology Control Regime issues.
5. Update on Export Administration Regulations.
6. Update on status of US Munitions List.
7. Discussion of Commerce Control List entries needing review for revalidation or change proposals.
8. Presentation of papers and comments by the public.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, BIS/EA MS: 1099D, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

For more information call Lee Ann Carpenter on (202) 482-2583.

Dated: October 27, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03-27386 Filed 10-29-03; 8:45 am]

BILLING CODE 3510-JT-M

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description, obtain a copy of the mission statement from the contact officer indicated for each individual mission below.

Environmental Technologies Trade Mission

Malaysia, Thailand, Vietnam, March 29–April 6, 2004, Recruitment closes February 6, 2004.

For Further Information Contact:

Yvonne Jackson, Project Manager, Export Promotion Services; U.S. Commercial Service, U.S. Department of Commerce, Room 2119, Washington, DC 20230, Tel: (202) 482-2675; Fax: (202) 482-2718; e-mail:

yvonne.jackson@mail.doc.gov.

Wake Margo, Project Manager, Export Promotion Services; U.S. Commercial Service, U.S. Department of Commerce, Room 2119, Washington, DC 20230, Tel: (202) 482-2026; Fax: (202) 482-0973; e-mail: *wake.margo@mail.doc.gov.*

Aerospace Executive Service Program

Asian Aerospace, Singapore, February 23–24, 2004, Recruitment closes January 10, 2004.

For Further Information Contact: Amy Magat, *ITA Aerospace & Defense Technology Team*; Downtown Los Angeles USEAC, 350 S. Figueroa St., Suite 509; Los Angeles, CA 90071, Tel: (213) 894-3966; Fax: (213) 894-8789; e-mail: *Amy.Magat@mail.doc.gov.*

Hawcheng Ng, American Embassy; 27 Napier Road; Singapore 258508, Tel. 011-(65) 6476-903; Fax 011-(65) 6476-9080, e-mail:

Hawcheng.Ng@mail.doc.gov.

U.S. Microelectronics Trade Mission

Shanghai and Suzhou, China, March 15–19, 2004, Recruitment closes January 31, 2004.

For Further Information Contact: Ms. Marlene Ruffin, Microelectronics

Industry Sector, ITA/ITI/TD/OMMI, Room 1015, U.S. Department of Commerce, Washington, DC 20230, Tel: (202) 482-0570; Fax: (202) 482-0975; e-mail: *marlene_ruffin@ita.doc.gov.*

Recruitment and selection of private sector participants for these trade missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. John Klingelhut, U.S. Department of Commerce, telephone (202) 482-4403 or e-mail: *John.Klingelhut@mail.doc.gov.*

Dated: October 24, 2003.

John Klingelhut,

Senior Advisor, Export Promotion Services.

[FR Doc. 03-27325 Filed 10-29-03; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Stellwagen Bank National Marine Sanctuary (SBNMS) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): *1 Member: Mobile Gear-Commercial Fishing (1) and, 4 Alternates: Education (2), Recreation (1), and Fixed Gear-Commercial Fishing (1).* Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve a 2 to 3-year term, pursuant to the Council's Charter.

DATES: Applicants are due by December 15, 2003.

ADDRESSES: Application kits may be obtained from Ruthetta Halbower, Administrative Secretary, SBNMS, 175 Edward Foster Road Scituate, MA 02066. Telephone: 781-545-8026 x201. E-mail: *ruthetta.halbower@noaa.gov.* Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT:

Nathalie Ward, Sanctuary Advisory Council Coordinator 175 Edward Foster Road Scituate, MA 02066. Telephone: 781-545-8026 x206 E-mail: *nathalie.ward@noaa.gov.*

SUPPLEMENTARY INFORMATION: The SBNMS Sanctuary Advisory Council (SAC or council) is a community-based advisory group established to advise the Sanctuary Superintendent and staff on issues relevant to the effective implementation of the *Sanctuary Management Plan*. The Council is the formal organizational link to the Sanctuary's user community and others interested in the management of this nationally significant area of the marine environment.

Duties of the Council include:

- Providing advice and recommendations to the Superintendent regarding management of the Sanctuary drawing upon the expertise of its members and other sources;
- Serving as liaisons between their communities and the Sanctuary, by keeping the Sanctuary staff informed of issues and concerns, as well as performing outreach to their respective communities on the Sanctuary's behalf; and
- Serving as a forum for consultation and deliberation among its members and as a source of consensus advice to the Superintendent.

The Council membership is to be made up of 15 non-governmental voting members and six governmental ex-officio members (non-voting). The non-governmental members are selected to represent local user groups, conservation or other public interest organizations, scientific and educational organizations, or members of the public interested in the protection and multiple use management of Sanctuary resources. Representatives from the following groups will be chosen: Conservation (2), education (2), research (2), recreation (1), whale watching (1), fixed fishing gear (1), mobile fishing gear (1), marine transportation (1), business/industry (1); and citizens-at-large (3).

The governmental members are to represent agencies with regulatory authorities or other direct interests in the Sanctuary and its resources. The member organizations are:

- National Marine Fisheries Service Northeast Regional Center (federal fisheries and protected species management);
- New England Regional Fishery Management Council (federal fisheries management planning);
- U.S. Coast Guard (federal marine resources and maritime enforcement);

- Massachusetts Office of Coastal Zone Management (state-federal ocean management consistency);
- Massachusetts Division of Marine Fisheries (state ocean fisheries management); and
- Massachusetts Division of Law Enforcement (cooperative state-federal environmental law enforcement).

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 23, 2003.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03-27318 Filed 10-29-03; 8:45 am]

BILLING CODE 3510-NK-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102303C]

North Pacific Fishery Management Council; Notice of Public Meeting

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

ACTION: Meetings of the North Pacific Fishery Management Council Improved Retention/Improved Utilization Technical Committee.

SUMMARY: The North Pacific Fishery Management Council (Council) Improved Retention/Improved Utilization Technical Committee will meet in Seattle, WA at the Alaska Fisheries Science Center.

DATES: The meetings will be held on November 18, 2003, 8 a.m.–5 p.m., and November 19, 2003, 8 a.m.–1 p.m.

ADDRESSES: These meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 1 (HR Conference Room), Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Jon McCracken Phone: 907-271-2809.

SUPPLEMENTARY INFORMATION: The Committee is scheduled to discuss: (1) Impacts of splitting the Prohibited Species Catch (PSC) total Allowable Catch between the Bering Sea and Aleutian Islands, (2) options for treating underutilized or unallocated species, (3) adjustments of the PSC allocations to

the Community Development Quota program if the groundfish allocations are changed, (4) methods for allocating PSC among sectors, (5) Pacific cod allocations and rollover issues (Component 9 of Amendment 80a), (6) harvest of pollock by the Non-American Fisheries Act trawl Catcher processor sector (Component 8 of Amendment 80b). The Committee may also address any other issues it deems necessary.

Although non-emergency issues not contained in this notice may come before these committees for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907-271-2809 at least 7 working days prior to the meeting date.

Dated: October 24, 2003.

Richard W. Surdi,

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

[FR Doc. E3-00142 Filed 10-29-03; 8:45 am]

BILLING CODE 3510-22-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations under the Textile and Apparel Commercial Availability Provision of the African Growth and Opportunity Act (AGOA), the Andean Trade Promotion and Drug Eradication Act (ATPDEA), and the U.S. - Caribbean Trade Partnership Act (CBTPA)

October 27, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (The Committee).

ACTION: Designation.

SUMMARY: The Committee has determined that ring spun single yarn of English yarn numbers 30 and 50, containing 50 percent or more, but less than 85 percent, by weight of 0.9 denier or finer micro modal fiber, mixed solely with U.S. origin extra long pima cotton,

classified in subheading 5510.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in women's and girls' knit blouses, shirts, lingerie, and underwear, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the ATPDEA, and the CBTPA. The Committee hereby designates such apparel articles that are both cut and sewn or otherwise assembled in one or more eligible beneficiary sub-Saharan African country or in one or more eligible CBTPA beneficiary country from U.S. formed fabrics containing such yarns as eligible to enter free of quotas and duties under HTSUS subheading 9819.11.24 or 9820.11.27, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the United States. The Committee also hereby designates such yarns as eligible under HTSUS subheading 9821.11.10, if used in women's and girls' knit blouses, shirts, lingerie, or underwear sewn or otherwise assembled in an eligible ATPDEA beneficiary country from U.S. formed fabric containing such yarns; such apparel containing such yarns shall be eligible to enter free of quotas and duties under this subheading, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the United States. The Committee notes that this designation under the ATPDEA renders women's and girls' knit blouses, shirts, lingerie, or underwear sewn or otherwise assembled in an eligible ATPDEA beneficiary country containing such yarn as eligible for quota-free and duty-free treatment under HTSUS subheading 9821.11.13, provided the requirements of that subheading are met.

EFFECTIVE DATE: October 30, 2003

FOR FURTHER INFORMATION CONTACT:

Janet E. Heinzen, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the CBTPA, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7350 and 7351 of October 4, 2000; Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

Background

The commercial availability provisions of the AGOA, the ATPDEA,

and the CBTPA provide for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamations 7350 and 7351 of October 4, 2000 and Presidential Proclamation 7616 of October 31, 2002, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the Federal Register. In Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002, the Committee was authorized to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the CBTPA, or the ATPDEA.

On June 5, 2003, the Committee received a request alleging that certain ring spun micro modal/pima cotton yarn, described above, for use in women's and girls' knit blouses, shirts, lingerie and underwear, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the ATPDEA and the CBTPA. It requested that such apparel articles from U.S. formed fabrics containing such yarns be eligible for preferential treatment under the AGOA, the ATPDEA, and the CBTPA. On June 12, 2003, the Committee requested public comment on the petition (68 FR 35202). On June 30, 2003, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Sector Advisory Committee for Wholesaling and Retailing and the Industry Sector Advisory Committee for Textiles and Apparel. On June 30, 2003, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On July 17, 2003, the U.S. International Trade Commission provided advice on the petition. Based on the information and advice received and its understanding of the industry, the Committee determined

that the yarn set forth in the request cannot be supplied by the domestic industry in commercial quantities in a timely manner. On August 4, 2003, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired, as required by the AGOA, the ATPDEA, and the CBTPA.

The Committee hereby designates women's and girls' knit blouses, shirts, lingerie, and underwear that are both cut and sewn or otherwise assembled in one or more eligible beneficiary sub-Saharan African country or in one or more eligible CBTPA beneficiary country from U.S. formed fabrics containing ring spun single yarn of English yarn numbers 30 and 50, containing 50 percent or more, but less than 85 percent, by weight of 0.9 denier or finer micro modal fiber, mixed solely with U.S. origin extra long pima cotton, classified in HTSUS subheading 5510.30.0000 as eligible to enter free of quotas and duties under HTSUS subheading 9819.11.24 or 9820.11.27, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the United States. The Committee also hereby designates such yarns as eligible under HTSUS subheading 9821.11.10, if used in women's and girls' knit blouses, shirts, lingerie, or underwear sewn or otherwise assembled in an eligible ATPDEA beneficiary country from U.S. formed fabric containing such yarns; such apparel containing such yarns shall be eligible to enter free of quotas and duties under this subheading, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the United States.

An "eligible beneficiary sub-Saharan African country" means a country which the President has designated as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 113 of the AGOA (19 U.S.C. 3722), resulting in the enumeration of such country in U.S. note 1 to subchapter XIX of chapter 98 of the HTSUS.

An "eligible ATPDEA beneficiary country" means a country which the President has designated as an ATPDEA beneficiary country under section 203(a)(1) of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3202(a)(1)), and which has been the subject of a finding, published in the

Federal Register, that the country has satisfied the requirements of section 203(c) and (d) of the ATPA (19 U.S.C. 3202(c) and (d)), resulting in the enumeration of such country in U.S. note 1 to subchapter XXI of Chapter 98 of the HTSUS.

An "eligible CBTPA beneficiary country" means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the Caribbean Basin Recovery Act (CBERA) (19 U.S.C. 2703(b)(5)(B)), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)), resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03-27371 Filed 10-29-03; 8:45 am]

BILLING CODE 3510-DR-S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Floyd County, Kentucky (Levisa Fork Basin), Section 202 Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers, DoD, Huntington District will prepare an Environmental Impact Statement (EIS). The EIS will evaluate potential impacts to the natural, physical, and human environment as a result of the proposed flood damage reduction measure for the Levisa Fork basin in Floyd County, Kentucky.

The Corps of Engineers will conduct a public scoping meeting (see **DATES**) to gain input from interested agencies, organizations, and the general public concerning the content of the EIS, issues and impacts to be addressed in the EIS, and alternatives that should be analyzed.

DATES: A scoping meeting is scheduled for Nov. 13, 2003, 4:30-7:30 p.m. at Prestonsburg High School, 825 Blackcat Boulevard, Prestonsburg, KY 41649.

ADDRESSES: Send written comments and suggestions concerning this proposed

project to S. Michael Worley PM-PD, U.S. Army Corps of Engineers, Huntington District, 502 Eight Street, Huntington, WV 25701-2070. Telephone: (304) 399-5802. Electronic mail: *Stephen M.*

Worley@Lrh01.usacre.army.mil.

Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Ms. Tammy Conforti PM-PD-S, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, WV 25701-2070. Telephone (304) 399-5834. Electronic mail:

Tammyr@Lrh.usacre.army.mil

SUPPLEMENTARY INFORMATION:

1. *Authority:* The proposed project is authorized under section 202 of the Water Resources Development Act (WRDA) of 1996, which provides the Corps authority to “* * * design and construct flood control measures relating to the Levisa and Tug Fork of the Big Sandy river and Cumberland River, West Virginia, Kentucky and Virginia”.

2. *Background:* Since the earliest Levisa Fork Basin settlements, the residents faced the problem of frequent and severe flooding. Many Floyd County communities within the floodplain of the Levisa and Russell Fork and tributaries were devastated by the April 1977 flood, which was the flood of record for much of the region. A significant flood again inundated the Levisa Fork communities in May of 1984. Congressional reaction to these flood events resulted in the inclusion of funds and language in various legislative directives that mandated expeditious implementation of flood damage reduction measures within the study area covered by the Huntington District's Section 202 General Plan.

The study area, primarily residential in nature, includes the incorporated areas of Prestonsburg and unincorporated areas in the county subject to flood damage from the potential of a reoccurrence of the April 1977 flood. The project requires providing flood protection measures to approximately 2,000 structures, 75 percent of which are residential.

Alternatives being initially considered include floodwall/levee systems protecting Prestonsburg, non-structural flood-proofing and several ring walls protecting individual structures. Alternatives to be evaluated in detail in the Draft EIS will be selected from those described above.

3. *Public Participation:* The Corps invites full public participation to promote open communication and better decision-making. All persons and

organizations that have an interest in the Levisa Fork Basin Flooding problems as they affect Floyd County and the environment are urged to participate in this NEPA environmental analysis process. Assistance will be provided upon request to anyone having difficulty with learning how to participate.

Public comments are welcomed anytime throughout the NEPA process. Formal opportunities for public participation include: (1) A public meeting in the community of Prestonsburg, KY (*see DATES*); (2) Anytime during the NEPA process via mail, telephone or e-mail; (3) During Review and Comment on the Draft EIS—approximately January of 2004; and (4) Review of the Final EIS—Fall 2004. Schedules and locations will be announced in local news media. Interested parties should submit contact information to be included on the mailing list for public distribution of meeting announcements and documents (*See ADDRESSES*).

Luiz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03-27359 Filed 10-29-03; 8:45 am]

BILLING CODE 3710-6M-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Programmatic Environmental Impact Statement for the Lake Washington Ship Canal Ecosystem Restoration Project, King County, WA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the U.S. Army Corps of Engineers (Corps), Seattle District, as lead Federal agency, will prepare a programmatic environmental impact statement (PEIS) evaluating alternative fish and wildlife habitat and water quality restoration approaches for the Lake Washington Basin, King County, Washington. This environmental impact statement will be a combined Federal NEPA and Washington State Environmental Policy Act (SEPA) document. The lead agency for SEPA will be the King County Water and Land Resources Division. Five restoration approaches will be evaluated in the PEIS: (1) No action; (2) Habitat restoration that would benefit multiple species; (3) A program that principally

benefits fish species listed as “threatened” under the Endangered Species Act (ESA); (4) Restoration that focuses on geographic areas; and (5) Restoration that focuses on specific life history stages. If approved, implementation of the program would begin in 2006. Potential issues of concern for the PEIS include impacts to fish and their habitat, water quality, wetlands, riparian habitat, flood control, land use, and public safety.

DATES: Submit comments to the address below by December 1, 2003.

ADDRESSES: Mr. Jeffrey F. Dillon, Environmental Resources Section, U.S. Army Corps of Engineers, P.O. Box 3755, Seattle, Washington 98124-3755.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the PEIS may be directed to: Jeffrey F. Dillon (206) 764-6174.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action.* The Corps of Engineers and the King County Water and Land Resources Division propose to evaluate alternative habitat restoration programs for the Lake Washington Basin in King and Snohomish Counties, Washington. For preparation of this PEIS, the Corps, Seattle District is the lead Federal agency under NEPA (42 USC 4321 et seq.) and the Council on Environmental Quality implementing guidelines (40 CFR 1500-1508). The King County Water and Land Resources Division is the lead state agency under the Washington SEPA (Chapter 43.21C RCW) and the SEPA guidelines (Chapter 197-10 WAC).

The Corps is authorized to implement habitat restoration programs under Section 209 of Public Law 87-874 (Puget Sound and Adjacent Waters Study) of the 1962 Flood Control Act, the Water Resources Development Act of 1990, and Corps ecosystem restoration guidance (Engineering Circular [EC] 1105-2-210). Corps of Engineers activities in ecosystem restoration will concentrate on bio-engineering solutions to water and related land resource problems.

The proposed action would restore aquatic ecosystem habitat and processes by reconnecting isolated habitat elements, increasing channel diversity, establishing areas of estuarine habitat, increasing floodplain habitat and connectivity, restoring small tributaries, increasing the amount of large woody debris in the river, replenishing river sediments, and improving the water temperature regime. If the proposed action were approved, initial construction would begin in 2006.

2. *Restoration Approaches:* Three programmatic restoration approaches will be considered and evaluated in the environmental impact statement. The first approach is the No Action alternative and would include various agencies and groups continuing to implement small-scale restoration projects but within a less coordinated framework than under the other proposed alternatives. Continued implementation of restoration projects might include reconnecting isolated habitat elements, localized bank revegetation, and some placement of large woody debris. The second approach is an ecosystem processes approach to habitat restoration within a comprehensive framework. Under this approach, benefits to many fish and wildlife species will be targeted. The third approach is restoration of ESA-listed fish species. Recently, Chinook salmon (*Oncorhynchus tshawytscha*) and bull trout (*Salvelinus confluentus*) have been listed under ESA. This approach would evaluate restoration actions that would focus benefits on these species.

3. *Scoping and Public Involvement:* Public involvement will be sought during scoping and throughout the study in accordance with NEPA and SEPA procedures. Public meetings will be held during public review of the draft PEIS. A public scoping process will be initiated to clarify issues of major concern, identify studies that might be needed to analyze and evaluate impacts, and obtain public input on the range and acceptability of approaches and further definition of alternatives. This notice of intent formally commences the joint scoping process under NEPA and SEPA. As part of the scoping process, all affected Federal, state, and local agencies, Native American tribes, and other interested private organizations, including environmental interest groups, are invited to comment on the scope of the PEIS. Comments are requested concerning project alternatives, mitigation measures, probable significant environmental impacts, and permits or other approvals that may be required. To date, the following impact areas have been identified and will be analyzed in depth in the PEIS: (1) Fish and their habitat, (2) water quality, (3) wetlands, (4) riparian habitat, (5) wildlife, (6) land use, and (7) public safety. The environmental review process will be comprehensive and will integrate and satisfy the requirements of NEPA (Federal) and SEPA (Washington State), and other relevant Federal, state, and local environmental laws. Written

comments may be accepted within 30 days of publication of this notice in the **Federal Register** (see **DATES**).

4. *Other Environmental Review, Coordination, and Permit Requirements:* Other environmental review, coordination, and permit requirements include preparation of a section 404(b)(1) evaluation by the Corps and consultation among the Corps, State of Washington, U.S. Fish and Wildlife Service, and National Oceanic and Atmospheric Administration both per section 7 of the Endangered Species Act. Coordination will also be initiated with the U.S. Fish and Wildlife Service to meet the requirements of the Fish and Wildlife Coordination Act.

5. *Availability of the Draft PEIS:* The draft PEIS is scheduled for release during the spring of 2004 and the Final PEIS is scheduled for release during the fall of 2004.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03-27358 Filed 10-29-03; 8:45 am]

BILLING CODE 3710-ER-M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice of renewal of the computer matching program between the Department of Education and the Department of Veterans Affairs.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, (Pub.L. 100-503), and the Office of Management and Budget (OMB) Final Guidelines on the Conduct of Matching Programs, notice is hereby given of the renewal of the computer matching program between the Department of Education (ED) (the recipient agency) and the Department of Veterans Affairs (VA) (the source agency). After a new computer matching agreement has been approved by the ED and VA Data Integrity Boards, the computer matching program will begin on the effective date as specified in the agreement and as indicated in paragraph 5, below.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, OMB Final Guidelines on the Conduct of Matching Programs (54 FR 25818, June 19, 1989), and OMB Circular No. A-130, the following information is provided:

1. *Names of Participating Agencies.*

The U.S. Department of Education and the U.S. Department of Veterans Affairs.

2. *Purpose of the Match.*

The purpose of this matching program between ED and VA is to verify the status of applicants for financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA), who claim to be veterans.

The Secretary of ED is authorized by the HEA to administer the Title IV programs and to enforce the terms and conditions of the HEA. The Secretary has the authority to treat veterans as independent applicants. Applicants who are determined to be veterans do not have to provide parental income and asset information to apply for Title IV, HEA program assistance.

Section 480(c)(1) of the HEA defines the term "veteran" to mean "any individual who (A) has engaged in active duty in the United States Army, Navy, Air Force, Marines, or Coast Guard; and (B) was released under a condition other than dishonorable." (20 U.S.C. 1087vv(c)(1)). Section 480(d)(3) of the HEA enables an applicant who is determined to be a veteran (as defined in subsection (c)(1)) to meet the definition of an independent student for purposes of Title IV, HEA program assistance eligibility. (20 U.S.C. 1087vv(d)(3)).

3. *Legal Authority for Conducting the Matching Program.*

ED is authorized to conduct the matching program under sections 480(c) and (d)(3) of the HEA (20 U.S.C. 1087vv(c)(1) and (d)(3)) and 5 U.S.C. 552a. The VA's authority is 38 U.S.C. 523.

4. *Categories of Records and Individuals Covered by the Match.*

ED will provide the Social Security Number and other identifying information of each applicant who indicates that he or she is a veteran. This information will be extracted from the Federal Student Aid Application File systems of records (18-11-01), pursuant to routine use no. 16, as corrected by 66 FR 18758 (April 11, 2001). The ED data will be matched against the Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA21), routine use no. 21, as added by 66 FR 30049-50 (June 4, 2001).

5. *Effective Dates of the Matching Program.*

The matching program will become effective on (1) December 24, 2003, the day after the expiration of the current computer matching agreement (CMA); (2) thirty (30) days after this notice of the matching program has been published in the **Federal Register**; or (3) forty (40) days after a report concerning the matching program has been transmitted to the Office of Management

and Budget and the Congress, whichever date occurs last. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries.

Individuals wishing to comment on this matching program or obtain additional information about the program, including requesting a copy of the computer matching agreement between ED and VA, should contact Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, 3111 Union Center Plaza, 830 First Street NE., Washington, DC 20202. Telephone: (202) 377-3385. 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, audiotope or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to the Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1-888-293-6498, or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and Code of Federal Regulations is available on GPO access at: <http://www.gpoaccess.gov/nara/index.html>.

Authority: 5 U.S.C. 552a; Pub. L. 100-503.

Dated: October 24, 2003.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.
[FR Doc. 03-27375 Filed 10-29-03; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[FE Docket Nos. PP-234 and PP-235]

Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Public Scoping Meetings and Notice of Floodplain and Wetlands Involvement; Baja California Power, Inc., and Semptra Energy Resources

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and to conduct public scoping meetings.

SUMMARY: Baja California Power, Inc. (BCP) and Semptra Energy Resources (SER) were issued Presidential permits by DOE to separately construct double-circuit 230,000-volt (230-kV) electric transmission lines across the U.S. border with Mexico. In addition, right-of-way grants were issued to each company by the Department of the Interior's Bureau of Land Management (BLM) for construction of the domestic portion of both transmission lines on Federal land. The transmission lines originate at new powerplants in Mexico, pass west of Calexico, California, and terminate at San Diego Gas & Electric Company's (SDG&E's) Imperial Valley Substation near El Centro, California. Under the National Environmental Policy Act of 1969 (NEPA), DOE and its cooperating agency in that proceeding, BLM, prepared an environmental assessment (EA) and findings of no significant impact (FONSIs) prior to issuance of the Presidential permits and right-of-way grants. On May 2, 2003, the United States District Court for the Southern District of California held that the EA and the FONSI did not comply with NEPA, and, on July 8, 2003, the court sent the matter back to the respective agencies for additional NEPA review.

The purpose of this notice of intent is to inform the public that DOE will now prepare an environmental impact statement (EIS) addressing BCP's and SER's projects and conduct two public scoping meetings. Although the two transmission lines have been constructed and are in service, DOE will, in accordance with the court's July 2003 order, conduct this NEPA review as if the transmission lines did not exist. BLM will be a cooperating agency.

DOE and BLM invite public participation in the scoping process and solicit public comments for consideration in establishing the scope and content of the EIS. Because the projects involve action in a floodplain, the EIS will include a floodplain assessment and floodplain statement of findings in accordance with DOE

regulations for compliance with floodplain and wetlands environmental review (10 CFR part 1022).

DATES: DOE and BLM invite interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the appropriate scope of the EIS. The public scoping period starts with the publication of this notice in the **Federal Register** and will continue until December 1, 2003. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by December 1, 2003, in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Public scoping meetings will be held on November 20, 2003, in El Centro, California, from 12 p.m. until 3 p.m. and in Calexico, California, from 5 p.m. until 8 p.m.

Requests to speak at a public scoping meeting(s) should be received by Mrs. Ellen Russell at the address indicated below on or before November 13, 2003. Requests to speak may also be made at the time of registration for the scoping meeting(s). However, persons who submitted advance requests to speak will be given priority if time should be limited during the meeting.

ADDRESSES: One copy of written comments or suggestions on the scope of the EIS and requests to speak at the scoping meeting(s) should be addressed to: Mrs. Ellen Russell, Office of Fossil Energy (FE-27), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350, Phone 202-586-9624, facsimile: 202-287-5736, or electronic mail at Ellen.Russell@hq.doe.gov.

The scoping meetings will be held at the City Hall of El Centro, located at 1275 W. Main Street, and the City of Calexico City Hall, located at 608 Heber Street.

FOR FURTHER INFORMATION CONTACT: For information on the proposed projects or to receive a copy of the Draft EIS when it is issued, contact Mrs. Russell at the address listed in the **ADDRESSES** section of this notice or:

Lynda Kastoll, Bureau of Land Management, U.S. Department of the Interior, 1661 South Fourth Street, El Centro, CA 92243, Phone: 760-337-4421, facsimile: 760-337-4490, or electronic mail at lkastoll@ca.blm.gov.

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH-42), U.S. Department of Energy, 1000

Independence Avenue, SW., Washington, DC 20585-0119, Phone: 202-586-4600 or leave a message at 800-472-2756; facsimile: 202-586-7031.

SUPPLEMENTARY INFORMATION:

Background on Transmission Projects

Executive Order 10485, as amended by Executive Order 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, operated, maintained, or connected at the U.S. international border. The Executive Order provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the impacts of the project on the reliability of the U.S. electric power system and on the environment in the United States. The regulations implementing the Executive Order have been codified at 10 CFR 205.320-205.329.

On February 27, 2001, BCP, a special purpose company and wholly-owned subsidiary of InterGen Aztec Energy V, B.V., and an indirect subsidiary of InterGen N.V., a Dutch limited liability company, filed an application with the Office of Fossil Energy (FE) of DOE for a Presidential permit. BCP proposed to construct a double-circuit 230-kV transmission line across the U.S.-Mexico international border. In a separate but similar proceeding, SER applied to DOE for a Presidential permit on March 7, 2001. SER, a non-regulated generating company, also proposed to construct a double-circuit 230-kV transmission line across the U.S.-Mexico international border.

In each of these projects, the applicants proposed to use the international transmission lines to connect separate powerplants located in Mexico to the SDG&E Imperial Valley Substation. Within the United States, both transmission lines were proposed to be constructed on BLM land parallel to an existing SDG&E 230-kV transmission line (IV—La Rosita line) connecting the Imperial Valley Substation with Mexico's La Rosita Substation. BCP and SER both also applied to BLM for right-of-way grants in order to be able to construct their respective projects on this Federal land.

BCP Powerplant and Transmission Line Project. In its application, BCP proposed to construct and operate a double-circuit 230-kV transmission line that would originate at the La Rosita Power Complex (LRPC), located 10 miles west of Mexicali, Mexico, and

extend north for approximately 3 miles where it would cross the Mexico-U.S. border west of Calexico, California. From the border, the line would extend approximately 6 miles on Federal land managed by BLM and terminate at the SDG&E Imperial Valley Substation. The LRPC contains four generating units that total 1060 megawatts (MW) of generating capacity. Two 250-MW generating units were developed at the request of the Mexican national electric utility, Comision Federal de Electricidad (CFE), and the electrical output of those two units is designated for use within Mexico. The electrical output (560 MW) of the two remaining generating units is designated for export to the United States. The electrical output (250 MW) of one of these generating units, owned by Energia Azteca X, S. de R.L. de C.V., could be exported to the U.S. over either the pre-existing IV—La Rosita line or the new BCP 230-kV line that is the subject of this EIS. The electrical output (310 MW) of the other unit designated for export to the U.S., owned by Energia de Baja California, could only be exported to the U.S. over the proposed BCP 230-kV line. The BCP application, including associated maps and drawings, can be downloaded in its entirety from the FE Web site (<http://www.fe.doe.gov>; choose "Electricity Regulation," then "Pending Proceedings").

SER Powerplant and Transmission Line Project. In its application, SER proposed to construct a double-circuit 230-kV transmission line that would originate at a 500-MW electric powerplant being developed by Termoelectrica de Mexicali (TDM) near Mexicali, Mexico, and extend north approximately 3 miles to the Mexico-U.S. border. From the border, the transmission line would extend approximately 6 miles on Federal land managed by the BLM and terminate at the SDG&E Imperial Valley Substation. The SER application, including associated maps and drawings, also can be downloaded in its entirety from the FE Web site given above.

Background on Prior NEPA Review

DOE and BLM originally determined the appropriate level of NEPA environmental review for both the BCP and SER proceedings to be an environmental assessment (EA). DOE and BLM prepared a single EA that assessed the potential environmental impacts that would accrue in the United States from the two transmission lines and from the operation of the two related Mexican powerplants. In December 2001, DOE and BLM issued the "Environmental Assessment for

Presidential Permit Applications for Baja California Power, Inc. and Sempra Energy Resources" (DOE/EA-1391). DOE relied on this EA to issue, on December 5, 2001, a FONSI and Presidential permits to both BCP and SER authorizing each to construct, operate, maintain, and connect electric transmission facilities crossing the international border between the United States and Mexico. BLM issued two FONSIs based upon the EA for the projects on December 19, 2001, and two Decision Records to grant the rights-of-way on December 20, 2001. The text of the EA and the DOE FONSI based upon it may also be found on the FE Web site listed above.

After the filing of the two Presidential permit applications, the maximum capacity of the TDM powerplant was increased from 500 MW to 600 MW. The analysis contained in the EA reflected this higher capacity. Subsequent to the issuance of the FONSIs, the two Presidential permits, and the two right-of-way grants, the two 230-kV transmission lines were placed into operation. Also, since issuance of the FONSIs, the developers of the LRPC powerplant have committed to install selective catalytic reduction technology on the remaining two units of the facility, the portion designated to generate power for Mexico. The equipment, which has been already ordered, is scheduled to be installed by the first quarter of 2006.

BCP completed construction of its transmission lines in September 2002 and placed the Mexican powerplants in commercial operation to export electricity to California on July 25, 2003. SER completed construction of its transmission lines in February 2003 and placed the Mexican powerplant in commercial operation to export electricity to California in July 2003.

On March 19, 2002, the Border Power Plant Working Group (Border Power) sued the DOE and BLM in the United States District Court for the Southern District of California (Case No. 02-CV-513-IEG (POR)) alleging violations of NEPA and the Administrative Procedure Act. Border Power sought to have the EA, DOE FONSI, Presidential permits, and right-of-way grants determined to be illegal and requested an injunction forbidding the use of the transmission lines to import electricity from the powerplants into California. After briefing and argument, the court issued two Orders. On May 2, 2003, the court held that the EA and the FONSI did not comply with NEPA. On July 8, 2003, the court sent the matter back to DOE and BLM for additional NEPA review consistent with the May and July

Orders. The court declined to enjoin operation of the transmission lines immediately, but instead deferred the setting aside of the Presidential permits and the FONSI until July 1, 2004, or until such time as superseding NEPA documents and permits are issued, whichever is earlier. (Material related to the Federal suit and the court's orders can be found on the FE Web site given above.)

In light of the concerns raised by the court in its decisions, and to increase opportunities for public and stakeholder participation in the environmental review of this proposal, DOE and BLM have decided to prepare an EIS.

Agency Purpose and Need, Proposed Action, and Alternatives

An agency's analysis of the proposed action and alternatives to that proposal is said to be the heart of an EIS. The analysis is intended to present the environmental impacts of the proposal in the United States and the alternatives in comparative form, thereby sharpening and defining the issues and providing a clear basis for choice by the decision maker and the public. The agency's alternatives should reflect the range of reasonable decisions consistent with the purpose and need for action. DOE and BLM also desire to comply with the court's orders. In its July 8, 2003, Order remanding this matter back to the respective agencies for additional NEPA review, the court stated:

Finally, the court **PROHIBITS** the federal defendants from considering the interim operation of the transmission lines, the completion of the construction, or this Court's equitable analysis of the environmental impacts of the proposed actions as part of the NEPA analysis and determination process on remand. *Cf. Northern Cheyenne Tribe v. Hodel*, 851 F.2d 1152, 1157 (9th Cir. 1988). (Emphasis in original.)

DOE and BLM have interpreted this language to require that they are to conduct their NEPA review from a fresh slate, *i.e.*, as if the transmission lines did not exist. Accordingly, DOE and BLM will base their EIS analysis on the same purpose and need as they did originally: whether to grant or deny Presidential permits and rights-of-way to BCP and SER.

In order to consider the complete range of reasonable alternatives, DOE and BLM propose the following preliminary alternatives:

1. No Action Alternative: Deny both permit and corresponding rights-of-way applications. This will present the environmental impacts in the United States as if the lines had never been constructed and will provide a baseline

against which the impacts in the United States of the action alternatives can be measured in the absence of Presidential permits and corresponding rights-of-way.

2. Grant one or both permits and corresponding right(s)-of-way. This will set forth the impacts in the United States of constructing and operating the line(s) from Mexican powerplants, as those plants are presently designed. This is DOE's and BLM's preferred alternative.

3. Alternative technologies: Grant one or both permits and corresponding right(s)-of-way to authorize transmission lines that connect to powerplants that employ more efficient emissions controls and alternative cooling technologies, such as "dry cooling" or a combination of wet and dry cooling that will minimize environmental and health impacts in the United States.

4. Mitigation measures: Grant one or both permits and corresponding right(s)-of-way to authorize transmission lines whose developers employ off-site mitigation measures to minimize environmental impacts in the United States. (For example, off-site mitigation could include off-sets, such as paving roads and retiring older automobiles.)

DOE and BLM also propose to consider alternative routes for the transmission lines within the United States under the action alternatives described above.

Because DOE and BLM have proceeded here from the assumption that no lines now exist, this EIS will not address the environmental impacts in the United States of removing the existing transmission lines and poles from BLM lands. Should permits and rights-of-way not be granted, the issue of whether to remove the existing lines from BLM lands will arise and the impacts in the United States from that action would have to be considered in appropriate future NEPA review.

DOE and BLM invite all stakeholders and the public to comment on these alternatives during the scoping period and to offer other alternatives for consideration. DOE and BLM can and have in the past added to their list of alternatives in an EIS if they deem that review of an alternative brought to their attention during scoping is reasonable, appropriate, and furthers the purposes of NEPA review, that is, produces useful information for the decision maker and the public.

Identification of Environmental Issues

One purpose of this notice is to solicit comments and suggestions for consideration in the preparation of the EIS. In addition to the issues identified

by the court ((1) the potential for public controversy; (2) water impacts; (3) impacts from ammonia and carbon dioxide; (4) the range of alternatives; and (5) cumulative impacts), DOE and BLM propose to analyze the following potential environmental issues:

1. Impacts on protected, threatened, endangered, or sensitive species of animals or plants, or their critical habitats in the United States (*e.g.*, the Flat-Tailed Horned Lizard);

2. Impacts on floodplains and wetlands in the United States;

3. Impacts on cultural or historic resources in the United States;

4. Impacts on human health and safety in the United States;

5. Impacts on air, soil, and water resources in the United States (*e.g.*, the Salton Sea and the New River);

6. Visual impacts in the United States; and

7. Disproportionately high and adverse impacts on minority and low-income populations in the United States.

This list is not intended to be all-inclusive or to imply any predetermination of impacts, and we invite interested parties to suggest other issues to be considered.

DOE and BLM welcome and invite Border Power and all who participated in the litigation to participate in scoping to assist DOE and BLM in identifying issues that they believe the agencies should address in their EIS.

Scoping Process

Interested parties are invited to participate in the scoping process both to refine the preliminary alternatives and environmental issues to be analyzed in depth, and to eliminate from detailed study those alternatives and environmental issues that are not feasible or pertinent. The scoping process is intended to involve all interested agencies (Federal, State, county, and local), public interest groups, Native American tribes, businesses, and members of the public. Both oral and written comments will be considered and given equal weight by DOE and BLM.

Public scoping meetings will be held at the locations, dates, and times indicated above under the **DATES** and **ADDRESSES** sections. These scoping meetings will be informal. The presiding officer will establish procedures to ensure that everyone who wishes to speak has a chance to do so and that DOE and BLM understand all issues and comments. Speakers will be allocated approximately 10 minutes for their oral statements. Depending upon the number of persons wishing to speak,

the presiding officer may allow longer times for representatives of organizations. Consequently, persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting(s), but advance requests are encouraged. If a speaker wishes to provide for the record further information that cannot be presented within the designated time, such additional information may be submitted in writing by the date listed in the **DATES** section. Meetings will begin at the times specified and will continue until all those present who wish to participate have had an opportunity to do so.

Draft EIS Schedule and Availability

In its order, the court stated that it would defer until July 1, 2004, the setting aside of the Presidential permits and the FONSI, and has ordered DOE and BLM to seek a hearing date on or before May 15, 2004, to brief these issues. DOE and BLM intend to prepare and issue a final EIS before May 15, 2004, so that it is available for the court's review.

The Draft EIS is presently scheduled to be issued by early 2004, at which time its availability will be announced in the **Federal Register** and local media, and public comments will be solicited on the Draft.

People who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the Draft EIS for review and comment when it is issued should notify Mrs. Russell at the address in the **ADDRESSES** section of this notice. DOE and BLM will publish the Draft both on paper and as a compact disc. In addition, DOE will make the Draft available on the World Wide Web at <http://tis.eh.doe.gov/nepa/documentspub.html>.

The Draft EIS will be made available for public inspection in several locations in the vicinity of the project. A notice of these locations will be provided in the **Federal Register** and local media at a later date.

Issued in Washington, DC, on October 24, 2003.

Beverly A. Cook,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 03-27234 Filed 10-29-03; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-13-010]

East Tennessee Natural Gas Company; Notice of Negotiated Rate Filing

October 23, 2003.

Take notice that on October 7, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing a negotiated rate transaction with one of its Patriot Project shippers. East Tennessee states that the purpose of this filing is to implement a negotiated rate agreement for firm service to be rendered on East Tennessee's Patriot Project (Docket No. CP01-415).

East Tennessee requests that the Commission accept this filing by October 22, 2003, to be effective on the date that East Tennessee commences service for customers on the Patriot Project.

East Tennessee states that copies of the filing were mailed to all affected customers of East Tennessee and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the intervention and protest date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00128 Filed 10-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-6-001]

Enbridge Pipelines (KPC); Notice of Tariff Filing

October 23, 2003.

Take notice that on October 20, 2003, Enbridge Pipelines (KPC) (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Revised Sheet No. 31A, to amend its FERC Gas Tariff, to be made effective November 1, 2003.

KPC states that the purpose of the filing is to correct a pagination error contained in its September 29, 2003 filing. KPC states that it determined that the sheet filed was designated as Fourth Revised Sheet No. 31A and that it had skipped Third Revised Sheet No. 31A.

KPC requested that (1) it be allowed to withdraw Fourth Revised Sheet No. 31A, (2) replace it with Third Revised Sheet No. 31A and (3) that the Commission remove Fourth Revised Sheet No. 31A from its electronic database such that KPC can use that designation in the future.

KPC states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00134 Filed 10-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted For Filing and Soliciting Comments, Motions To Intervene, and Protests

October 22, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12467-000.

c. *Date Filed:* August 18, 2003.

d. *Applicant:* Amory L & D Hydro, LLC.

e. *Name of Project:* Amory Lock and Dam Hydroelectric Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers' (Corps) existing dam on the Tombigbee Waterway in Monroe County, Mississippi.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Mr. Brent L. Smith, President; Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, (208) 745-0834.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502-8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the Corps existing dam would consist of: (1) One 9-foot-diameter, 300-foot-long steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 2 MW, (3) a 14.7-kv transmission line interconnected into the utility distribution systems owned

by TVA, and (4) appurtenant facilities. The project would have an annual generation of 12 gigawatt hours.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development

application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,
Secretary.

[FR Doc. E3-00137 Filed 10-29-03; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-605-001]

Tennessee Gas Pipeline Company; Notice of Compliance Tariff Filing

October 23, 2003.

Take notice that on October 20, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Sub Eighth Revised Sheet No. 357, with an effective date of March 1, 2004.

Tennessee's filing requests that the Commission approve a revision to Article VII of the General Terms and Conditions of Tennessee's FERC Gas Tariff. Tennessee states that the revision is filed in compliance with the Commission's October 10, 2003, order requiring Tennessee to remove certain language and clarify the general intent of the provision.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-

free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,
Secretary.

[FR Doc. E3-00131 Filed 10-29-03; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-25-000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

October 23, 2003.

Take notice that on October 17, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, the revised tariff sheets as listed on appendix A, to the filing, to become effective December 1, 2003.

Texas Eastern states that it has submitted its Annual Interruptible Revenue Reconciliation Report reflecting a credit, for the benefit of customers, of approximately \$3.3 million to the ASA Deferred Account.

Texas Eastern further states that the revised tariff sheets and the Annual Interruptible Revenue Reconciliation Report contained in the filing are being filed Applicable Shrinkage Adjustment (ASA), and section 15.8, Periodic Reports, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

Texas Eastern states that it is making this Annual ASA pursuant to section 15.6, filing earlier than the October 31 due date specified by the tariff to provide advance rate information to its markets and customers preparing for the upcoming winter.

Texas Eastern states that copies of its filing have been mailed or, if requested, emailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's

Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.

[FR Doc. E3-00132 Filed 10-29-03; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-26-000]

Transcontinental Gas Pipe Line Corporation; Notice of Overrun Penalty Refund Report

October 23, 2003.

Take notice that on October 17, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report showing that on October 15, 2003, Transco submitted penalty refunds to the affected shippers. Transco states that the total refund amount, including interest, was \$520,659.32.

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 § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on

the Commission's Web site at <http://www.ferc.gov> using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.

[FR Doc. E3-00133 Filed 10-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04-6-000, et al.]

Allegheny Energy Supply Company, LLC, et al.; Electric Rate and Corporate Filings

October 21, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Allegheny Energy Supply Company, LLC and Constellation Power Source, Inc.

[Docket No. EC04-6-000]

Take notice that on October 15, 2003, Allegheny Energy Supply Company, LLC (AE Supply) and Constellation Power Source, Inc. (CPSI) (together, the Applicants) filed a joint application for disposition of certain power contracts under Section 203 of the Federal Power Act all as more fully described in their application. The Applicants request expeditious Commission approval to permit the transfer of the power contracts to be completed by November 28, 2003.

Comment Date: November 5, 2003.

2. Chanarambie Power Partners LLC

[Docket No. EG03-104-000]

Take notice that on September 15, 2003, Chanarambie Power Partners LLC (Chanarambie) tendered for filing with the Commission an application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 and 18 CFR part 365 of the Commission's regulations.

Chanarambie states that it will own and sell the output at wholesale of a

wind-power generating facility located in Murray County, Minnesota (the Facility). Chanarambie further states that when completed, the Facility will consist of 57 wind-powered turbine generators and ancillary equipment having a generating capability of 85.5MW.

Comment Date: November 3, 2003.

3. California Independent System Operator Corporation

[Docket No. ER03-942-001]

Take notice that on October 16, 2003, the California Independent System Operator Corporation (ISO), submitted a filing in response to Commission Staff's Letter of August 7, 2003, requesting additional explanations concerning the ISO's Amendment No. 53 Tariff filing submitted on June 10, 2003.

The ISO states that this filing has been served upon all parties in the captioned proceeding, and has been posted on the ISO Home Page.

Comment Date: November 6, 2003.

4. Xcel Energy Services, Inc.; Northern States Power Company

[Docket No. ER03-1282-001]

Take notice that on October 14, 2003, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company (NSP) submitted for filing with the Federal Energy Regulatory Commission (Commission) a response to Staff's request for additional information in support of the Generation Interconnection Agreement between NSP and Boeve Windfarm LLC filed with the Commission on September 2, 2003.

NSP requests the agreement to be accepted for filing effective August 1, 2003, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

Comment Date: November 4, 2003.

5. Ebersen, Inc.

[Docket No. ER03-1330-001]

Take notice that on October 16, 2003, Ebersen, Inc. amended its filing of September 12, 2003 by submitting a revised Rate Schedule No. 1.

Comment Date: November 6, 2003.

6. Enermetrix.com

[Docket No. ER03-1356-001]

Take notice that on October 15, 2003, Enermetrix.com tendered for filing an amendment to the Notice of Cancellation of its Market-based Rate Authority filed on September 17, 2003.

Comment Date: November 5, 2003.

7. Western Electricity Coordinating Council

[Docket No. ER04-51-000]

Take notice that on October 16, 2003, Western Electricity Coordinating Council (WECC) tendered for filing a request for approval of certain amendments to WECC rate Schedule FERC No. 1, the WECC Bylaws. WECC states that the amendments reflect changes to the WECC Bylaws adopted by vote of the WECC membership and by the WECC Board of Directors, including revisions to ensure consistency and clarity, revision of confidentiality provisions to reflect the need to protect security-sensitive information, and "clean-up" language changes that eliminate references relating only to WECC's initial formation.

WECC states that copies of the filing were served upon all parties in the above-captioned proceeding.

Comment Date: November 6, 2003.

8. Wisconsin Electric Power Company

[Docket No. ER04-52-000]

Take notice that on October 16, 2003, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing Amendment No. 1 to the Joint Operating Agreement (JOA or Agreement) between Wisconsin Electric and Edison Sault Electric Company (Edison Sault).

Wisconsin Electric states that the purpose of the filing is to amend the current JOA so as to include voluntarily requested "Renewable Energy" among the portfolio of energy resources that are covered by the Agreement. Wisconsin Electric and Edison Sault request that the Commission approve Amendment No. 1 to become effective on November 1, 2003.

Comment Date: November 6, 2003.

9. AmerenEnergy Resources Generating Company

[Docket No. ER04-53-000]

Take notice that on October 17, 2003, AmerenEnergy Resources Generating Company (AERG), pursuant to 18 CFR 35.16 and 131.51, tendered for filing a Notice of Succession, reflecting a change in the company's name from Central Illinois Generation, Inc. to AmerenEnergy Resources Generating Company. AERG states that as a result of this name change, there will be no changes in structure or operations. AERG requests an effective date of October 3, 2003 for this filing.

Comment Date: November 7, 2003.

10. Southwest Power Pool, Inc.

[Docket Nos. RT04-1-000 and ER04-48-000]

Take notice that on October 15, 2003, Southwest Power Pool, Inc. (SPP) tendered for filing a request for recognition as a Regional Transmission Organization (RTO). SPP states that the filing includes its Open Access Transmission Tariff revised to meet all applicable requirements of Order Nos. 2000 and 2000-A. SPP further states that its filing conforms to the guidance offered in the Commission's White Paper on Wholesale Power Market Platform, issued April 28, 2003 in Docket No. RM01-12-000.

SPP states that copies of this filing were served upon all SPP Members and customers, as well as on all state commissions within the region.

Comment Date: November 5, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502-8222 or TTY, (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00127 Filed 10-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 2720-036]

Sturgeon Falls Hydro; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

October 23, 2003.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission (Commission) and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2720-036.

c. *Date Filed:* July 29, 2002.

d. *Applicant:* City of Norway, Michigan.

e. *Name of Project:* Sturgeon Falls Hydroelectric Project.

f. *Location:* On the Menominee River in Dickinson County, Michigan and Marinette County, Wisconsin. The project does not utilize lands of the United States.

g. *Filed Pursuant To:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Ray Anderson, City Manager, City of Norway, City Hall, 915 Main Street, Norway, Michigan 49870, (906) 563-8015.

i. *Commission Staff Contact:* Patti Leppert, (202) 502-6034, or patricia.leppert@ferc.gov.

j. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

k. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice, reply comments must be filed with the Commission within 105 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resources agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions 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 (<http://www.ferc.gov>) under the "e-Filing" link. The Commission strongly encourages electronic filings.

l. *Description of the Project:* The existing Sturgeon Falls Hydroelectric Project consists of: (1) A 270-foot-long concrete dam with spillway equipped with a 16.7-foot-high by 24-foot-wide Taintor gate and a 16.7-foot-high by 16-foot-wide Taintor gate; (2) a 126.5-foot-long concrete head-works structure; (3) a 400-acre impoundment with a normal pool elevation of 829.8 feet National Geodetic Vertical Datum; (4) a 300-foot-long, 60-foot-wide power canal; (5) a powerhouse containing four generating units with a total installed capacity of 5,136 kilowatts; (6) a 300-foot-long, 7.2-kilovolt transmission line; and (7) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at <http://www.ferc.gov/esubscribenow.htm> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support. To view upcoming Commission events, please go to www.ferc.gov and click on "View Entire Calendar".

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions

or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

n. *Procedures Schedule*: The Commission staff proposes to issue one environmental assessment (EA), rather than issuing a draft and final EA. The staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposed alternative procedure, they should file comments as stipulated in item k above, briefly explaining the basis for their objection. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue Notice of availability of EA: February 2004.

Ready for Commission decision on the application: April 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00129 Filed 10-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent Not To File an Application for a New License

October 22, 2003.

a. *Type of Filing*: Notice of Intent Not to File an Application for a New License.

b. *Project No.*: 2225.

c. *Date Filed*: September 23, 2003.

d. *Submitted By*: Public Utility District No. 1 of Pend Oreille County—current licensee.

e. *Name of Project*: Sullivan Creek Project.

f. *Location*: On Sullivan Creek in Pend Oreille County, Washington.

g. *Filed Pursuant to*: Section 15 of the Federal Power Act.

h. *Licensee Contact*: Mr. Mark Cauchy, Public Utilities District No. 1, Pend Oreille County, 130 North Washington, Newport, WA 99156 or (509) 447-3137.

i. *FERC Contact*: Tim Looney, timothy.looney@ferc.com or (202) 502-6096.

j. *Effective date of current license*: October 1, 1950.

k. *Expiration date of current license*: September 30, 2008.

l. *Description of the Project*: The project consists of the following existing facilities:

(a) Sullivan Lake dam; (b) Mill Pond dam; (c) Mill Pond historic site; (d) wood flume and earth canal; (e) tunnel; (f) powerhouse; and (g) appurtenant facilities. The project has no installed capacity.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 2006.

n. A copy of this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or TTY (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Register online at <http://www.ferc.gov/esubscribenow.htm> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support as shown in the paragraph above.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00136 Filed 10-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 22, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12468-000.

c. *Date Filed*: August 18, 2003.

d. *Applicant*: Umatilla Energy Partners LLC.

e. *Name of Project*: Umatilla Hydroelectric Project.

f. *Location*: The proposed project would be located at the U.S. Army Corps of Engineers' (Corps) existing John Day Lock and Dam on the Columbia River in Sherman County, Oregon.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact*: Mr. Mark Steinley; Umatilla Energy Partners LLC, 725 Lower Valley Road, Kalispell, MT 59901, (801) 374-8709.

i. *FERC Contact*: Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502-8763.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed run-of-river project using the Corps existing John Day Lock and Dam would consist of: (1) An existing screened excess water pipe, (2) a powerhouse containing one generating unit with an installed capacity of 3.86 megawatts, (3) an existing 13.2-kv transmission line, and (4) appurtenant facilities. The project would have an annual generation of 32 gigawatt hours.

l. *Locations of Applications*: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*: Anyone desiring to file a competing

application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application: Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent: A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion

to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

t. Agency Comments: Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00138 Filed 10-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL04-01-000]

New England Gas Pipeline and Storage Study; Notice of Public Conference

October 24, 2003.

Take notice that on November 14, 2003, at 10 am in Meeting Room A at the Massachusetts Department of Telecommunication and Energy, One South Station, Boston, Massachusetts, the Staff of the Federal Energy Regulatory Commission (FERC or Commission) will convene a technical conference with interested parties to discuss issues related to the study being performed by the Commission concerning natural gas and storage facilities in New England. Section 26 of the Pipeline Safety Improvement Act of 2002 requires the Commission, in consultation with the Department of Energy, to conduct this study in order to consider the ability of natural gas pipeline and storage facilities in New England to meet current and projected demand by gas-fired power generation plants and other consumers.

The conference will consist of an overview of the study currently in preparation by the Commission staff followed by discussion and recommendations from a panel composed of representatives of New England energy interests. A question and answer session will follow the panel discussion.

Transcripts of the conference will be available from Ace-Federal Reporters, Inc. for a fee (202) 347-3700. The transcript will be available on the Commission's "eLibrary" system two weeks after the conference.

For additional information, please contact John Schnagl in the Office of Energy Projects, phone: (202) 502-8756, e-mail: john.schnagl@ferc.gov.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00141 Filed 10-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Intent To Prepare an Environmental Impact Statement and Notice of Scoping Meetings and Soliciting Scoping Comments**

October 23, 2003.

Take notice that the following hydroelectric applications have been filed with Commission and are available for public inspection:

- a. *Type of Application*: New Major License.
- b. *Project No.*: 1971–079.
- c. *Date Filed*: July 21, 2003.
- d. *Applicant*: Idaho Power Company.
- e. *Name of Project*: Hells Canyon Hydropower Project.
- f. *Location*: On the Snake River in Washington and Adams Counties, Idaho; and Wallowa and Baker Counties, Oregon. About 5,270 acres of Federal lands administered by the Forest Service and the Bureau of Land Management (Payette and Wallowa-Whitman National Forests and Hells Canyon National Recreational Area) are included within the project boundary.
- g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).
- h. *Applicant Contact*: Mr. Robert W. Stahman, Vice President, Secretary, and General Counsel, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707.
- i. *FERC Contact*: Alan Mitchnick, (202) 502–6074; alan.mitchnick@ferc.gov.
- j. *Deadline for filing scoping comments*: December 22, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. The existing Hells Canyon Project consists of three developments: Brownlee Development consists of a 395-foot-high earth and rockfill dam, a 14,621-acre impoundment, and a powerhouse with five generating units producing 585.4 megawatts (MW); Oxbow Development consists of a 209-foot-high earth and rockfill dam, a 1,150-acre impoundment, and a powerhouse with four generating units producing 460 MW; and Hells Canyon Development consists of a 320-foot-high concrete gravity dam, a 2,412-acre impoundment, and a powerhouse with three generating units producing 391.5 MW. Idaho Power also operates four fish hatcheries and four adult fish traps. Idaho Power proposes to exclude 3,800 acres of Federal lands surrounding the project reservoirs and 11 of 12 existing transmission lines from the project.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process*: The Commission intends to prepare an Environmental Impact Statement (EIS) on the project in accordance with the National Environmental Policy Act. The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and three public meetings. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meetings are primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or all of the meetings, and to assist the staff in identifying the scope of the environmental issues that

should be analyzed in the EIS. The times and locations of these meetings are as follows:

Agency Scoping Meeting

When: Tuesday, November 18, 2003, starting at 9:30 a.m.

Where: Boise Centre on the Grove, 850 Front Street, Boise, Idaho.

Public Scoping Meetings*Idaho Meetings*

When: Tuesday, November 18, 2003, from 7 p.m. until about 9 p.m.

Where: Boise Centre on the Grove, 850 Front Street, Boise, Idaho.

When: Thursday, November 20, 2003, from 7 p.m. until about 9 p.m.

Where: Washington County Senior Center, 115 E. Main Street, Weiser, Idaho.

Oregon Meeting

When: Wednesday, November 19, 2003, from 7 p.m. until about 9 p.m.

Where: Lions Club Community Hall, Halfway, Oregon.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EIS were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link (see item m above).

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in

defining and clarifying the issues to be addressed in the EIS.

Magalie R. Salas,
Secretary.

[FR Doc. E3-00139 Filed 10-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03-7-002]

Natural Gas Price Formation; Supplemental Notice of Staff Workshop on Market Activity and Price Indicators

October 23, 2003.

As announced in the Notice issued October 15, 2003, the Commission's staff will hold a workshop from 10 a.m. to 5 p.m. on Tuesday, November 4, 2003, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This supplemental notice discusses the nature of the issues to be discussed at the workshop and provides information on how to participate by teleconference.

Issues for Discussion at Workshop

In its *Policy Statement on Natural Gas and Electric Price Indices*, Docket No. PL03-3-000, the Commission stated that price indices used in natural gas pipeline tariffs must "reflect adequate liquidity." The purpose of the workshop is to discuss how the Commission should weigh market activity and the reliability of natural gas and electric price indicators for use in Commission tariffs. The following highlights some of the issues to be discussed at the workshop.

Many factors need to be considered in determining whether a market is liquid. A market is generally more liquid the less time it takes to complete a transaction and the lower the cost of making the transaction. In addition, a market is considered more liquid the smaller the price effect of any particular transaction. The empirical determination of liquidity is difficult, given the information and measures available.

Measures commonly used to assess the liquidity of a market include: the bid-ask spread, the price effect of a change in volatility in the market, the price effect of large-volume trades, the number of trades, the time between trades, the time it takes to sell an asset, and others. However, some of the information necessary for using many of these measures is not always readily

available, not public, or not recorded. In sum, it can prove quite difficult to develop practicable measures of the degree to which a particular market is liquid. In place of more direct measures of liquidity, natural gas and electric markets have begun to use measures of market size and activity.

Following is a list of questions that give a sense of what the workshop discussion should address:

1. How do market participants define and measure liquidity?
2. What data are and are not available to measure liquidity?
3. What is the relationship between the level of activity in a market and its liquidity?
4. How should the Commission decide if a particular market (or index point) sustains sufficient activity?
5. How can and should minimum levels of market activity required to support a reliable index be measured?
6. What level of liquidity/reliability is necessary for use in jurisdictional tariffs?
7. How should the liquidity of a pricing point that is very active on average but has very little activity on occasion be evaluated?
8. Is there a difference between the liquidity of daily and monthly indices?
9. Can the liquidity of a pricing point be demonstrated by aggregating transactions that take place on multiple transaction facilities?
10. Can liquid points be used to price illiquid ones?

Access by Teleconference

The workshop is open to the public, and we would like to hear from as many as possible on these important price formation issues. For those unable to attend in person, teleconferencing will be available during the workshop.

Toll-free dial-in number: 1-888-809-8967.

Leader's name: Jolanka Fisher.

Pass code: Fisher.

For additional information please contact Jolanka Fisher, 202-502-8863 or by e-mail at Jolanka.Fisher@ferc.gov.

Magalie R. Salas,
Secretary.

[FR Doc. E3-00135 Filed 10-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-47-002]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

October 23, 2003.

Take notice that October 20, 2003, Gulf South Pipeline Company (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets with an effective date of May 1, 2003:

Second Revised Sheet No. 2003.
First Revised Sheet No. 2004.
Sheet No. 2005.

Gulf South states that the revised tariff sheets are being filed in compliance with the Commission's October 3, 2003 Order regarding Gulf South's proposal to establish a minimum threshold for the connection of new receipt and delivery points and to require certain quality control equipment to be installed at receipt points.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,
Secretary.

[FR Doc. E3-00130 Filed 10-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of FERC Staff Participation at SPP Members Annual Meeting and SPP Board of Directors Meeting**

October 22, 2003.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff will attend the Annual Meeting of Members and the Board of Directors meeting of the Southwest Power Pool, Inc. (SPP). The staff's attendance is part of the Commission's ongoing outreach efforts.

The SPP Board of Directors meeting will be held October 28, 2003 from 1 pm to 5 pm. The SPP Annual Meeting of Members will be held on October 29, 2003 from 8 a.m. to 12 p.m. Both meetings will take place at the Peabody Hotel, Three Statehouse Plaza, Little Rock, AR 72201.

These meetings are open to the public. The meetings may discuss matters at issue in Docket No. RT04-1-000 and ER04-48-000, Southwest Power Pool, Inc.

For more information, contact Tony Ingram, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (202) 502-8938 or tony.ingram@ferc.gov.

Magalie R. Salas,
Secretary.

[FR Doc. E3-00140 Filed 10-29-03; 8:45 am]

BILLING CODE 6717-01-P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96-45; DA 03-2959]

Sprint Corporation's Petition for Designation as an Eligible Telecommunications Carrier in Tennessee

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the Sprint Corporation's (Sprint) petition. Sprint is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered throughout its licensed service area in the state of Tennessee.

DATES: Comments are due on or before November 10, 2003. Reply comments are due on or before November 24, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. See

SUPPLEMENTARY INFORMATION for further filing instructions.

FOR FURTHER INFORMATION CONTACT:

Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96-45, released September 26, 2003. On September 3, 2003, Sprint filed with the Commission a petition pursuant to section 214(e)(6) of the Communications Act of 1934, as amended, seeking designation as an ETC to receive federal universal service support for service offered in portions of its licensed service area in Tennessee that cover partial and complete wire centers served by BellSouth Telecommunications, Inc., a non-rural incumbent local exchange carrier. Specifically, Sprint contends that: the Tennessee Regulatory Authority has provided an affirmative statement that it does not regulate commercial mobile radio service (CMRS) carriers; Sprint satisfies all the statutory and regulatory prerequisites for ETC designation; and designating Sprint as an ETC will serve the public interest.

The petitioner must provide copies of its petition to the Tennessee Regulatory Authority. The Commission will also send a copy of this Public Notice to the Tennessee Regulatory Authority by overnight express mail to ensure that the Tennessee Regulatory Authority is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: Comments are due on or before November 10, 2003, and reply comments are due on or before November 24, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.htm>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to

each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [<ecfs@fcc.gov>](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, NATEK, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5-B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, NATEK Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Paul Garnett,

Acting Assistant Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03-27302 Filed 10-29-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96-45; DA 03-2960]

Sprint Corporation's Petition for Designation as an Eligible Telecommunications Carrier in Pennsylvania

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the Sprint Corporation's (Sprint) petition. Sprint is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered throughout its licensed service area in the state of Pennsylvania.

DATES: Comments are due on or before November 10, 2003. Reply comments are due on or before November 24, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See*

SUPPLEMENTARY INFORMATION for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96-45, released September 26, 2003. On September 4, 2003, Sprint filed with the Commission a petition pursuant to section 214(e)(6) of the Communications Act of 1934, as amended, seeking designation as an ETC to receive federal universal service support for service offered in portions of its licensed service area in Pennsylvania that are served by two non-rural incumbent local exchange carriers—Verizon Pennsylvania, Incorporated and Verizon North, Incorporated. Specifically, Sprint contends that: The Pennsylvania Public Utility Commission (Pennsylvania Commission) has provided an affirmative statement that it does not regulate commercial mobile radio service (CMRS) carriers; Sprint satisfies all the statutory and regulatory

prerequisites for ETC designation; and designating Sprint as an ETC will serve the public interest.

The petitioner must provide copies of its petition to the Pennsylvania Commission. The Commission will also send a copy of this Public Notice to the Pennsylvania Commission by overnight express mail to ensure that the Tennessee Regulatory Authority is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due on or before November 10, 2003, and reply comments are due on or before November 24, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, NATEK, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held

together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5-B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, NATEK Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Paul Garnett,

Acting Assistant Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03-27303 Filed 10-29-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, November 4, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, November 6, 2003, at 10 a.m.

PLACE: N999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes. Revised Draft Advisory Opinion 2003–23: Women Engaged in Leadership, Education, and Action in Democracy (“WE LEAD”) by counsel, Joseph E. Sandler and Neil P. Reiff. Draft Advisory Opinion 2003–26: Voinovich for Senate Committee by William L. Curlis, Treasurer. Draft Advisory Opinion 2003–27: Missouri Green Party, Inc., by Timothy V. Barnhart, Treasurer. Notice of Disposition on Mailing Lists of Political Committees. Final Rules and Explanation and Justification on Party Committee Telephone Banks. Final

Rules and Explanation and Justification on Candidate Travel. Final Rules and Explanation and Justification on Multicandidate Political Committees and Biennial Contribution Limits. Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:
Mr. Ron Harris, Press Officer,
Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–27472 Filed 10–28–03; 11:57 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License no.	Name/address	Date reissued
3981NF	All-Cargo Express Inc., Lakeview Professional Village, 12558 West Atlantic Blvd., Coral Springs, FL 33071.	September 14, 2003.
16199NF	Global Container Line, Inc., dba Global Ocean Air Solutions, 2013 NW 79th Avenue, Miami, FL 33122.	February 21, 2001.
13579NF	JCW International Group, Inc., dba JCW Freight Systems, dba JCW Container Line, 380 Swift Avenue, South San Francisco, CA 94080.	July 12, 2003.
16039N	Neville Johnson dba P.J. Shipping Co., 111–19 Farmers Blvd., St. Albans, NY 11412.	June 21, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–27315 Filed 10–29–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 12054N.

Name: Crown Containers, Inc.

Address: 601 West Carob Street, Compton, CA 90220.

Date Revoked: October 3, 2003.

Reason: Failed to maintain a valid bond.

License Number: 1477F.

Name: Freight Brokers International, Inc.

Address: 201 Meadow Road, Edison, NJ 08817.

Date Revoked: September 23, 2003.

Reason: Surrendered license voluntarily.

License Number: 1304F.

Name: Marina Shipping Co., Inc.

Address: 2860 Walnut Avenue, Signal Hill, CA 90806.

Date Revoked: October 3, 2003.

Reason: Failed to maintain a valid bond.

License Number: 13266F.

Name: Trans—Aero—Mar, Inc.

Address: 1203 NW. 93rd Ct., Miami, FL 33172.

Date Revoked: September 17, 2003.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–27314 Filed 10–29–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

TC & RE Enterprises, Inc. dba Joinus Worldwide Freight, 500 Carson Plaza Dr., #221, Carson, CA 90746
Officer: Christina Han, President (Qualifying Individual).

J & B International, Inc., 2250 Landmeier Road, Suite E, Elk Grove Village, IL 60007, Officer: Denny Kim, President (Qualifying Individual).

Superior Logistic, Inc., 131 S. Brent Circle, Walnut, CA 91789, Officers: Hung Che (Henry) Lien, President (Qualifying Individual), Zou Ying Lee, Secretary.

Epic International Transport, LLC, 6048 Lido Lane, Long Beach, CA 90803, Officer: Charles Alphonsus Brennan, Manager (Qualifying Individual).

All World Services Inc. dba Quick International Service Inc., 8348 NW 30th Terrace, Miami, FL 33122, Officers: Javier Perez, President (Qualifying Individual), Carmen C. Perez, Vice President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

Capitol Transportation & CHB Corp., 8925 NW 27th Street, Miami, FL 33172, Officers: Manuel G. Viegas, President (Qualifying Individual), Irene Rivero, Vice President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Argosy Shipping (USA), LP, 6575 West Loop South, Suite 110, Bellaire, TX 77401, Officers: C. Rider Griswold, President (Qualifying Individual), Madelaine Griswold, Vice President.

Bryant L. VanBrakle,
Secretary.

[FR Doc. 03–27313 Filed 10–29–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION**Sunshine Act Meeting Notice**

AGENCY: Federal Trade Commission.

TIME AND DATE: 2 p.m., Wednesday, November 12, 2003.

PLACE: Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion Open to Public: (1) Oral Argument in Chicago Bridge & Iron Company, N.V., *et al.* Docket 9300.

PORTION CLOSED TO THE PUBLIC: (2) Executive Session to follow Oral Argument in Chicago Bridge & Iron Company, N.V., *et al.* Docket 9300.

CONTACT PERSON FOR MORE INFORMATION: Mitch Katz, Office of Public Affairs: (202) 326–2180. Recorded Message: (202) 326–2711.

Donald S. Clark,
Secretary.

[FR Doc. 03–27470 Filed 10–28–03; 11:49 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Office of the Secretary****Findings of Scientific Misconduct**

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Ilya Koltover, Ph.D., California Institute of Technology: Based on the report of an investigation conducted by the California Institute of Technology (CIT) (CIT Report), an admission by the

respondent, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Ilya Koltover, Ph.D., former postdoctoral fellow at CIT, engaged in scientific misconduct in research supported by PHS Postdoctoral Fellowship F32 GM20588 entitled “Design of targeted synthetic gene delivery vehicles.”

Specifically, PHS found that Dr. Koltover plagiarized a scanning micrograph (STM) from a graduate student, falsified it as an atomic force micrograph (AFM) of a separate molecule, and falsely represented it (1) to his research group at Caltech; (2) in his grant application to the Petroleum Research Fund (PRF); and (3) to his mentor, who then included it as an AFM figure in a proposal to the National Science Foundation (NSF).

Dr. Koltover has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed for a period of three (3) years, beginning on October 3, 2003:

(1) To exclude himself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant;

(2) That any institution which submits an application for PHS support for a research project on which Dr. Koltover’s participation is proposed or which uses him in any capacity on PHS supported research, or that submits a report of PHS-funded research in which he is involved, must concurrently submit a plan for supervision of his duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of his research contribution. Dr. Koltover agreed to ensure that a copy of the supervisory plan is also submitted to ORI by the institution and that he will not participate in any PHS-supported research until such a supervision plan is submitted to ORI; and

(3) That any institution employing Dr. Koltover submit, in conjunction with each application for PHS funds or report, manuscript, or abstract of PHS funded research in which he is involved, a certification that the data provided by Dr. Koltover are based on actual experiments or are otherwise legitimately derived, and that the data, procedures, and methodology are accurately reported in the application or report. Dr. Koltover must ensure that the institution sends a copy of the certification to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative

Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 03–27295 Filed 10–29–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Administration for Children and Families****Privacy Act of 1974, as Amended; Computer Matching Program**

AGENCY: ACF, HHS.

ACTION: Notice of a computer matching program.

SUMMARY: In compliance with the Privacy Act of 1974, as amended by Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, we are publishing a notice of a computer matching program. The purpose of this computer match is to identify specific individuals who are receiving payments pursuant to various benefit programs administered by both HHS and Department of Agriculture. ACF will facilitate this program on behalf of the State Public Assistance Agencies (SPAAs) that participate in the Public Assistance Reporting Information System (PARIS) for verification of continued eligibility for public assistance. The match will utilize Department of Veterans Affairs (VA) records and SPAA records.

DATES: ACF will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Information and Regulatory Affairs with the Office of Management and Budget (OMB). The dates for the matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by writing to the Director, Office of Financial Services, Office of Administration, 370 L’Enfant Promenade, SW., Washington, DC 20447. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Director, Office of Financial Services, Office of Administration, 370 L’Enfant Promenade, SW., Washington, DC 20447. Telephone Number (202) 401–7237.

SUPPLEMENTARY INFORMATION: Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving federal benefits. The law regulates the use of computer matching by federal agencies when records in a system of records are matched with other federal, state and local government records. Federal agencies which provide or receive records in computer matching programs must:

1. Negotiate written agreements with source agencies;
2. Provide notification to applicants and beneficiaries that their records are subject to matching;
3. Verify match findings before reducing, suspending, or terminating an individual's benefits or payments;
4. Furnish detailed reports to Congress and OMB; and
5. Establish a Data Integrity Board that must approve matching agreements.

This computer matching program meets the requirements of Pub. L. 100–503.

Dated: October 17, 2003.

Curtis L. Coy,

Deputy Assistant Secretary for Administration, ACF.

Notice of Computer Matching Program

A. Participating Agencies

VA and the SPAAs.

B. Purpose of the Match

To identify specific individuals who are receiving benefits from VA and also receiving payments pursuant to HHS and Department of Agriculture benefit programs, and to verify their continued eligibility for such benefits. SPAAs will contact affected individuals and seek to verify the information resulting from the match before initiating any adverse actions based on the match results.

C. Authority for Conducting the Match

The authority for conducting the matching program is contained in section 402 of the Social Security Act (42 U.S.C. 602).

D. Records to be Matched

VA will disclose records from its Privacy Act system of records entitled "Compensation, Pension, Education and Rehabilitation Records" (58 VA 21/22 first published at 41 FR 9294 (March 3, 1976), and last amended at 66 FR 47727 (September 13, 2001)). VA's disclosure of information for use in this computer match is listed as a routine use in this system of records.

VA, as the source agency, will prepare electronic files containing the names

and other personal identifying data of eligible veterans receiving benefits. These records are matched electronically against SPAA files consisting of data regarding monthly Medicaid, Temporary Assistance to Needy Families (TANF), general assistance, and Food Stamp beneficiaries.

1. The electronic files provided by the SPAAs will contain client names and Social Security numbers (SSNs).

2. The resulting output returned to the SPAAs will contain personal identifiers, including names, SSNs, employers, current work or home addresses, etc.

E. Inclusive Dates of the Matching Program

The effective date of the matching agreement and date when matching may actually begin shall be at the expiration of the 40-day review period for OMB and Congress, or 30 days after publication of the matching notice in the **Federal Register**, whichever date is later. The matching program will be in effect for 18 months from the effective date, with an option to renew for 12 additional months, unless one of the parties to the agreement advises the others by written request to terminate or modify the agreement.

[FR Doc. 03–27356 Filed 10–29–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002N–0276]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT:

Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 10, 2003 (68 FR 58955), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0502. The approval expires on October 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: October 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–27292 Filed 10–29–03; 8:45 am]

BILLING CODE 4160–01–S

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). The meeting will be open 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 November 20, 2003, from 9 a.m. to 5 p.m.

Location: Hilton Washington DC North, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Geretta Wood, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 143, 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, make recommendations, and vote on a premarket approval application for a drug-eluting stent indicated for improving luminal diameter and reducing restenosis for the treatment of de novo lesions. Background information for the topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at <http://www.fda.gov/cdrh/panelmtg.html>. Material will be posted on November 19, 2003.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 10, 2003. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberation and for approximately 30 minutes near the end of the committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 10, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301-594-1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 21, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03-27291 Filed 10-29-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D-0451]

Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: West Nile Virus Serological Assay; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Serological Reagents for the Laboratory Diagnosis of West Nile Virus." This guidance document describes a means by which West Nile virus serological reagents may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify West Nile Virus IgM Capture Elisa assay into class II (special controls). This guidance document is immediately in effect as the special control for West Nile virus serological reagents, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies of this guidance on a 3.5" diskette of the guidance document entitled "Class II Special Controls Guidance Document: Serological Reagents for the Laboratory Diagnosis of West Nile Virus" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written comments concerning this guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Sally Hojvat, Center for Devices and

Radiological Health (HFZ-440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-2096

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the West Nile Virus IgM Capture Elisa Assay into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for West Nile virus serological reagents. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments we receive in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on West Nile virus serological assays. 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 statute and regulations.

III. Electronic Access

To receive "Class II Special Controls Guidance Document: Serological Reagents for the Laboratory Diagnosis of West Nile Virus" by fax machine, call the CDRH Facts-On-Demand system at

800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number 1206 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at <http://www.fda.gov/cdrh>. A search capability for all CDRH guidance documents is available at <http://www.fda.gov/cdrh/guidance.html>. Guidance documents are also available on the Dockets Management Branch Internet site at <http://www.fda.gov/ohrms/dockets>.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 USC 3501-3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB Control Number 0910-0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB Control Number 0910-0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Two copies of mailed 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. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 8, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03-27293 Filed 10-29-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[CFDA 93-145, HRSA 04-076]

Cooperative Agreement for a Twinning Center (CATC)

AGENCIES: Health Resources and Services Administration, Centers for Disease Control and Prevention, and National Institutes of Health, Department of Health and Human Services; United States Agency for International Development.

ACTION: Notice of availability of funds.

SUMMARY: This notice announces the availability of funds for a Cooperative Agreement for the establishment of a Twinning Center (TC) to support twinning and volunteer activities as part of the implementation of the President's International Mother and Child HIV Prevention Initiative (Initiative). The Cooperative Agreement will be awarded for a 5-year project period.

Program Purpose: The purpose of this funding is to support the President's Initiative, focusing on the reduction/prevention of mother-to-child transmission (PMTCT) of HIV/AIDS. This 5-year Initiative, through a combination of improving care, prophylaxis of HIV-positive mothers, and building healthcare delivery capacity is expected to reach up to one million women annually and reduce mother-to-child HIV transmission by 40 percent within those 5 years in 14 targeted countries in Africa and the Caribbean. This is a unified government initiative, coordinated and implemented by a PMTCT Interagency Steering Committee, led by the Office of the Global AIDS Coordinator in the Department of State, that include as members the Offices of National AIDS Policy (ONAP) and Management and Budget in the White House, the United States Agency for International Development (USAID), the Department of State, and the Department of Health and Human Services (HHS) and its component agencies, the Centers for Disease Control and Prevention (CDC), the Health Resources and Services Administration (HRSA), and the National Institutes of Health (NIH).

Fourteen countries and one regional office in the Caribbean were initially selected to be part of the Initiative, based on high HIV burden, limited country resources, and host government and civil society commitment to fighting the HIV epidemic and scaling up PMTCT programs. The President's Initiative is intended to complement other bilateral and international support efforts, including support through the Global Fund to Fight AIDS, Tuberculosis, and Malaria. In addition, the Initiative represents specific U.S. Government assistance to help the Initiative countries reach the United Nations General Assembly Special Session on AIDS' goals for reducing mother-to-child HIV transmission.

A long term goal of the President's Initiative is capacity building in clinics and communities to deliver PMTCT. Two of the strategies outlined by the President for human and institutional capacity building are twinning and volunteer activities, which will be implemented through a TC and a Volunteer Health-Care Corps (VHC), although other strategies, including other forms of training, will be employed. The volunteer activities under this program will exist within the twinning partnerships, although the TC will also coordinate with the activities of target country volunteers outside of the twinning activities. The goal of the TC is to strengthen human and organizational capacity through twinning and healthcare volunteers to rapidly expand the pool of trained providers, managers, and allied health staff delivering quality HIV/AIDS services to HIV-infected pregnant women and HIV-exposed infants in 14 target countries in Africa and the Caribbean. The TC will work collaboratively with HRSA's HIV/AIDS Bureau, CDC, USAID, and ONAP to assist in the implementation of the President's Initiative at the country level. The guiding principle for the TC and VHC is that the implementation of this program will be based on the needs of the targeted country as identified by the USAID/CDC field offices' human resources plan.

The definition of "twinning" for the purposes of this Notice of Availability of Funds (NOAF) for a Cooperative Agreement for a Twinning Center (CATC) is the definition developed by the Canadian Interagency Coalition on AIDS and Development in its publication *Beyond Our Borders: A Guide to Twinning for HIV/AIDS Organizations*: A formal, substantive collaboration between two similar organizations. "Formal" means there is an agreement or contract, verbal or

written. "Substantive" means the interaction between the twinning partners is significant and lasts for a period of time. "Collaboration" means that the partner organizations work together on a specific project or exchange information and skills.

A centrally-funded TC will broker and facilitate relationships between twinning partners, plan and fund logistics for the VHC, and fund in-country twinning partners. The twinning plan will build upon existing relationships between U.S. and target country institutions as well as initiate new twinning partnerships.

Eligible Applicants: Public or nonprofit private entities, including schools and academic health sciences centers, community-based organizations, and faith-based organizations are eligible to apply for the CATC. Eligible organizations for twinning funding assistance at the in-country level will depend on the specific twinning activity, but may include hospitals, health clinics, training/educational institutions, and non-government organizations, including community- and faith-based organizations. Applicants for the TC must have domestic and international experience providing technical assistance to HIV/AIDS service organizations.

Authorizing Legislation: Department of Health and Human Services: Section 307 of the Public Health Service (PHS) Act, 42 U.S.C. 242l. United States Agency for International Development: Foreign Assistance Act of 1961, as amended, and Executive Order 11223.

Availability of Funds: Funds are available under the appropriation included in Pub. L. 107-116 for International HIV/AIDS activities. It is estimated that up to \$150,000,000 for up to 5 years may be available to support the TC and twinning activities in the 14 target countries, with \$2,000,000 for the TC and up to \$2,000,000 for twinning activities in the 14 countries during the first year. There will be 2 separate awards to the same recipient for these activities: funding for target country twinning activities will be awarded by USAID, and funding for the provision of technical assistance activities by the TC will be awarded by HRSA/DHHS. Funding awards will be made during the first or early second quarter of the Federal fiscal year 2004 (calendar year October 1, 2003 to March 31, 2004). The TC will be funded for a 12-month budget period, with a project period of up to 5 years. Continuation awards for the TC after the first year will be made based upon satisfactory performance and the availability of Federal funds.

Funding for in-country twinning activities funded by USAID will be made on a specific project basis, with funding for 1 year and a project period of up to 5 years. Continuation funding for specific twinning activities will be based upon satisfactory performance of existing twinning partnerships, initiation of new twinning partnerships, and availability of Federal funds.

Application Deadline: Applications for this cooperative agreement must be received in the HRSA Grants Application Center (GAC) by close of business December 29, 2003. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. One original and two copies of an application will be required. A legible dated receipt from a commercial carrier or the U.S. Postal Service will be accepted instead of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Grant applications postmarked after the deadline will be returned.

Late applications: Applications which do not meet the criteria above are considered late applications. Health Resources and Services Administration (HRSA) shall notify each late applicant that its application will not be considered in the current competition.

The Chief Grants Management Officer (CGMO) or a higher level designee may authorize an extension of published deadlines when justified by circumstances such as acts of God (e.g., floods or hurricanes), widespread disruptions of mail service, or other disruptions of services, such as a prolonged blackout. The authorizing official will determine the affected geographical area(s).

Electronic Submission: HRSA encourages applicants to submit applications on-line. To register and/or log-in to prepare your application, go to <https://grants.hrsa.gov/webexternal/login.asp>. For assistance in using the on-line application system, call 877-GO4-HRSA (877-464-4772) between 8:30 am to 5:30 pm ET or e-mail callcenter@hrsa.gov.

Application narratives and spreadsheets will need to be created separately and submitted as attachments to the application. You will be prompted to "upload" your attachments at strategic points within the application interface. The following document types will be accepted as attachments: WordPerfect (.wpd), Microsoft Word (.doc), Microsoft Excel (.xls), Rich Text

Format (.rtf), Portable Document Format (.pdf).

To look for funding opportunities, go to <http://www.hrsa.gov/grants> and follow the links.

DUNS Number: Beginning October 1, 2003, applicants will be required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. If applicants are submitting an application on or after October 1, 2003 a DUNS number is required. To obtain a DUNS number, access www.dunandbradstreet.com or call 1-866-705-5711. Please include DUNS number next to OMB Approval Number on the application face page. Applications will not be reviewed without a DUNS number.

Additionally, the applicant organization will be required to register with the Federal Government's Central Contractor Registry (CCR) in order to do business with the Federal Government, including electronic. Information about registering with the CCR can be found at <http://www.hrsa.gov/grants.htm>.

Where to Request and Send an Application: To prepare and submit an application, organizations must obtain: (1) the CATC Program Guidance and (2) the official Federal grant application kit required for these cooperative agreements, PHS Form 5161-1, along with 2 separate budgets (one budget for the HRSA-funded activities and one budget for the USAID-funded activities) using Standard Form (SF) 424. The Program Guidance is available on the HIV/AIDS Bureau Web site at the following Internet address: <http://www.hab.hrsa.gov/grant.htm>. The PHS Form 5161-1 is available at the following Internet address: <http://forms.psc.gov/forms/PHS/phs.html>. The SF 424 is available at the following Internet addresses: http://forms99.psc.gov/Forms/sf-424_2.htm (instructions for HRSA budget) and http://www.usaid.gov/procurement_bus_opp/procurement/forms/SF-424/ (instructions for USAID budget). For those organizations who do not have access to the Internet, hard copies of the Program Guidance, PHS Form 5161-1 and SF 424 may be obtained from the HRSA GAC. You can reach the HRSA GAC toll-free at (877) 477-2123, fax (877) 477-2345, or e-mail: hrsagac@hrsa.gov. Please request the Office of Management and Budget Catalogue of Federal Domestic Assistance Number 93-145, HRSA 04-076 and Program Code CATC.

Notification of Letter of Intent: Letters of intent will be used by the Funding Agencies to estimate the number of applications which will be submitted.

This will help determine the number and types of reviewers which will be required for the objective review. Therefore applicants must submit a one-page letter of intent. This letter must identify the applicant organization, its intent to apply, and briefly describe the proposal to be submitted.

ADDRESSES: All Cooperative Agreement applications should be mailed or delivered to: HRSA Grant Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland 20879. Applications sent to any other address will be returned.

FOR FURTHER INFORMATION CONTACT:

Additional information on the TC and the HRSA/DHHS technical assistance portion of the Cooperative Agreement may be obtained from Thurma Goldman, MD, MPH, HIV/AIDS Bureau, at (301) 443-1993; fax (301) 443-9645; e-mail: tgoldman@hrsa.gov; mail HIV/AIDS Bureau, HRSA 5600 Fishers Lane, Parklawn Building, Room 7-13, Rockville, Maryland 20857.

Additional information on the twinning activity funding portion of the Cooperative Agreement may be obtained from Mr. Eduardo G. Elia, USAID, Contracts Specialist, M/OP/GH/POP, at (202) 712-0901; fax (202) 216-3132; e-mail eelia@usaid.gov; mail USAID, M/OP/GH/POP, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, RRB 7.09-133, Washington, DC 20523-7100.

Pre-Application Technical Assistance Conference Call: There will be a pre-application technical assistance conference call with potential applicants approximately 3 weeks after publication of the Notice of Availability of Funds (NOAF) for the CATC. The conference call will be with HRSA and USAID officials familiar with the NOAF requirements. The purpose of the call will be to answer questions which potential applicants may have about the application guidance or questions about completing the application. All questions to be discussed at the conference call must be submitted in advance of the call to HRSA, by fax, e-mail, or regular mail. Questions should be submitted to: Thurma Goldman, M.D., M.P.H., Program Director, Global HIV/AIDS, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Room 7-13, Rockville, MD 20857, at (301)-443-1993; fax: 301/443-9645; e-mail: TGoldman@hrsa.gov. To find out the exact date and time of the technical assistance conference call, and timeframe for submission of questions, please call the HRSA's HIV/AIDS Bureau main office on (301) 443-1993.

Technical Oversight of the Cooperative Agreements: The TC

Cooperative Agreement will be managed by two Project Officers. The USAID Project Officer will provide oversight and technical management of the Cooperative Agreement activities associated with the award and monitoring of funds for the actual expenses of the in-country twinning partners and volunteer activities. The HRSA Project Officer will provide oversight and technical management of the activities associated with the operation and management of the TC and VHC and the provision of technical assistance to the twinning partners (including the identification of organizations and partnerships and proposed activities) and VHC.

Guidance for the CATC will be provided by a Technical Assistance Group, which will be subordinate to the PMTCT Interagency Steering Committee, comprised of members of the Presidential Initiative Human Resources Workstream. Guidance will be provided to the TC via the USAID and HRSA Project Officers. The Guidance will provide overall direction for the TC's goals and objectives in the development and implementation of partnerships.

SUPPLEMENTARY INFORMATION:

Cooperative Agreements are a type of Federal assistance that involves a substantial level of government participation in funded activities. Under the cooperative agreement, HRSA and USAID require that certain activities be planned jointly and include approval from HRSA, USAID, and the TC Technical Assistance Group. HRSA and USAID responsibilities will be in the following areas:

(a) Provide consultation and technical assistance in planning, operation, and evaluation activities, including the identification and selection of in-country partners;

(b) facilitate the coordination and collaboration among program partners, such as USAID, CDC and their field offices or missions, and the TAG and TC;

(c) facilitate efforts in the provision of technical assistance and training in twinning to specified individuals and organizations;

(d) participate, as appropriate, in the planning and implementation of any meetings, training activities, or workgroups conducted during the period of the cooperative agreement;

(e) provide technical assistance to the TC to increase its capacity to succeed in this international collaboration;

(f) maintain an ongoing dialogue with the TC concerning program plans, policies, and other issues which have

major implications for any activities undertaken by the applicants under the cooperative agreement;

(g) review, provide comments, recommendations, and approvals for documents, curricula, program plans, budgets, work to be contracted out, key personnel (including consultants and contractors), workplan revisions, etc. prior to printing, dissemination or implementation;

(h) provide feedback to the TC on quarterly and other reports; and

(i) serve as the official interface between the TAG and the TC.

Detailed information on grantee responsibilities is provided in the application guidance.

The applicant receiving the award will be required to submit quarterly reports, a mid-term report during the 30th month of the project, and a final report at the end of the project.

The applicant receiving the award will not be required to match or share in project costs. Any matching or cost sharing will not be considered as part of the selection decision.

This program is subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Application packages made available under this Guidance will contain a listing of States which have chosen to set up such a review system and will provide a Single Point of Contact (SPOC) for the state's review. Information on states affected by this program and State Points of Contact may also be obtained from the Grants Management Specialist cited in the application guidance, as well as at <http://www.whitehouse.gov/omb/grants/spoc.html>. All applicants other than federally recognized American Indian tribes should contact their SPOCs as early as possible to alert them to prospective applications and receive any necessary instruction on the State process used under this Executive Order.

The activities proposed to be implemented through this award are not considered to be research activities.

Non-Federal reviewers will participate in the review of submitted applications. Applicants have the option of omitting from the application copies (but not from the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information.

Review Process: Applications submitted in response to this NOAF will be reviewed for threshold criteria and technical merit by an Objective Review Committee. Each application must address and apply for both aspects of the TC: (A) Brokering, facilitation, and management of twinning partners; and (B) funding of in-country twinning and volunteer activity. The threshold criteria are: (1) Program Approach and Implementation Plan for Building Human and Organizational Capacity (30 points), (2) Institutional Capability and Past Performance (20 points), (3) Personnel Capability and Experience (20 points), (4) Program Evaluation and Quality Improvement (15 points), and (5) Clarity and Justification of the Budget (15 points). Technical Merit criteria are more completely defined in the Application Kit.

Dated: October 20, 2003.

Elizabeth M. Duke,

Administrator, Health Resources and Services Administration.

[FR Doc. 03-27335 Filed 10-29-03; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

Comments are invited on: (a) Whether the proposed collections of information are 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: Obligated Service for Mental Health Traineeships: Regulations (42 CFR Part 62a) and Forms—(Extension, no change; 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. Prior to statutory change in 2000, graduate student recipients of these clinical traineeships were required to 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 funded prior to implementation of the statutory change are required to submit SAMHSA Form 111, 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 citation and associated forms	Number of respondents	Responses/respondent	Average burden/response (hrs.)	Annual burden (hrs.)
64a.104(a,b), (c)(1), Termination Notice and Exit Interview—SMA 111	39	1	.10	4
64a.105(b)(2), Annual Payback Activities Certification—SMA 111-2	95	1	.18	17
Total	134			21

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 24, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03-27324 Filed 10-29-03; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

Comments are invited on: (a) Whether the proposed collections of information are 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: Substance Abuse Prevention and Treatment Block Grant—45 CFR part 96 (OMB No. 0930-0163; Extension, no change)—This rule provides guidance to States regarding the Substance Abuse Prevention and Treatment Block Grant legislation, including requirements regarding the sale or distribution of tobacco products to individuals under age eighteen. The rule implements the reporting and recordkeeping requirements of 42 U.S.C. 300x21-35 and 51-64 by specifying the content of the States' annual report on and application for block grant funds, including the annual conduct of random, unannounced inspections to ensure compliance with 42 U.S.C. 300x-26, related to sale or distribution of tobacco to individuals under age eighteen. The reporting burden hours will be counted towards the total burden for the Substance Abuse

Prevention and Treatment Block Grant Application Format (OMB No. 0930-0080) and the Substance Abuse

Treatment Block Grant Synar Report Format (OMB No. 0920-0222) for which separate approval is obtained. The total

annual reporting and recordkeeping burden estimate is shown below:

45 CFR citation	Number of respondents	Responses/respondent	Hours/response	Total hour burden
Reporting Burden				
Annual Report:				
96.122(d) ¹ due date	60	1	1	60
96.122(d) ² extension request	60	1	1	60
96.122(f)	60	1	152	9,120
96.130(e)(1-3)	59	1	15	885
96.134(d)	60	1	16	960
State Plan:				
96.122(g)	60	1	162	9,720
96.124(c)(1)	60	1	40	2,400
96.127(b)	60	1	8	480
96.130(e)(4,5)	59	1	14	826
96.130(g)	59	1	5	295
96.131(f)	60	1	8	480
96.133(a)	60	1	80	4,800
Waivers: ²				
96.122(d)	26	1	1	26
96.124(d)	0	1	40	0
96.132(d)	0	1	16	0
96.134(b)	3	1	40	120
96.135(d)	0	1	8	8
Total Reporting Burden ³	60	1		30,240
Recordkeeping Burden				
96.129(a)(13)	60	1	16	960

¹ This is a one-time burden associated with change of the due date for the annual report effective with the FY 2001 application.

² The number of respondents per year for the waiver requests is based on actual experience over the past several years.

³ All reporting burden associated with reporting on the sale or distribution of tobacco products to individuals under age eighteen is approved under OMB control number 0930-0222; reporting burden for the annual report, state plan, and waivers is approved under OMB control number 0930-0080.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 24, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03-27326 Filed 10-29-03; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG-2003-14878]

Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for comments; and notice of public meeting.

SUMMARY: On September 26, 2003, the Coast Guard published a notice announcing the dates and locations of

three public meetings to be held to receive comments on how best to address implementation of Automatic Identification System (AIS) carriage requirements on certain navigable waters of the U.S. for vessels not on international voyages. In that notice, we did not have a specific location for the November 13, 2003, public meeting in New Bedford, MA. We are publishing that location in this notice as well as rescheduling the Seattle, WA, public meeting from December 5, 2003, to December 9, 2003. We also ask two additional questions to those previously published.

DATES: Comments and related material must reach the Docket Management Facility on or before January 5, 2004. Public meetings will be held on the following dates in the following cities:

- November 5, 2003, 9 a.m. to 12 a.m. (noon), in New Orleans, LA.
- November 13, 2003, 9:30 a.m. to 12:30 p.m., in New Bedford, MA.
- December 9, 2003, 1 p.m. to 4:30 p.m., in Seattle, WA.

ADDRESSES: *Comments.* You may submit comments identified by Coast Guard docket number USCG-2003-14878 to

the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site:* <http://dms.dot.gov>.

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001.

(3) *Fax:* (202) 493-2251.

(4) *Delivery:* Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

Meeting: The meetings will be held at the following locations:

- New Orleans, LA—Hale Boggs Federal Building, Room B100, 501 Magazine Street, New Orleans, LA 70130.
- New Bedford, MA—New Bedford Whaling Museum, Museum Theater, 18 Johnny Cake Hill, New Bedford, MA 02740-6398.
- Seattle, WA—Northern Auditorium, 4th Floor, Federal Building, 915 Second Avenue, Seattle, WA 98174.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Mr. Jorge Arroyo, Office of Vessel Traffic Management (G-MWV-1), Coast Guard, telephone (202) 267-6277, fax (202) 267-4826 or e-mail: jarroyo@comdt.uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone (202) 366-0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to our request for comments by submitting comments and related materials. All comments received will be posted, without change, to <http://dms.dot.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" three paragraphs below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG-2003-14878], indicate the specific question you are responding to, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to <http://dms.dot.gov> at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may

review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

Questions

In addition to the eight questions that will be the topic of the meetings, published in the **Federal Register** (http://dmses.dot.gov/docimages/pdf88/255517_web.pdf) on September 26, 2003 (68 FR 55643), we add the two following questions:

(9) Our final rule published in the **Federal Register** (http://dmses.dot.gov/docimages/pdf88/257425_web.pdf) on October 22, 2003 (68 FR 60559), specifically exempted fishing vessels and certain passenger vessels from AIS carriage requirements. Other than costs, are there any specific reasons—particularly regarding safety or security—that warrant these vessels being excluded from AIS carriage? In particular, describe why these vessels should be treated differently from other commercial vessels over 65 feet in length?

(10) Recognizing that the cost of AIS are not insignificant, and are deemed by various commenters as being unreasonable, at what cost point would AIS be reasonable or not impose an undue burden?

Public Meetings

The public meetings regarding this notice on the expansion of Automatic Identification System (AIS) carriage requirements for U.S. waters will be held, respectively—

- November 5, 2003, 9 a.m. to 12 a.m. (noon), at 8th Coast Guard District, Hale Boggs Federal Building, Room B100, 501 Magazine Street, New Orleans, LA 70130.

- November 13, 2003, 9:30 a.m. to 12:30 p.m., at New Bedford Whaling Museum, Museum Theater, 18 Johnny Cake Hill, New Bedford, MA 02740-6398.

- December 9, 2003, 1 p.m. to 4:30 p.m., at 13th Coast Guard District, Federal Building, 915 Second Avenue, 4th Floor, Northern Auditorium, Seattle, WA 98174.

Dated: October 24, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03-27284 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08-03-044]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: The next meeting of LMRWSAC will be held on Tuesday, November 18, 2003, from 9 a.m. to 12 p.m. This meeting may adjourn early if all business is finished. Requests to make oral presentations or submit written materials for distribution at the meeting should reach the Coast Guard on or before November 12, 2003. Requests to have a copy of your material distributed to each member of the committee in advance of the meeting should reach the Coast Guard on or before November 4, 2003.

ADDRESSES: The meeting will be held in the Crescent City Room Suite 1830 at the World Trade Center Building, 2 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Rick Paciorka, Committee Administrator, telephone (504) 589-4222, fax (504) 589-4241. Written materials and requests to make presentations should be mailed to Commanding Officer, Marine Safety Office New Orleans, Attn: LT Paciorka, 1615 Poydras Street, New Orleans, LA 70112.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC). The agenda includes the following:

- (1) Introduction of committee members.
- (2) Remarks by CAPT R. W. Branch, Executive Director.
- (3) Approval of the May 6, 2003 minutes.
- (4) Old Business:
 - (a) Captain of the Port status report.
 - (b) VTS update report.
 - (c) PORTS update report.
- (5) New Business.

- (6) Next meeting.
(7) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than November 12, 2003. Written material for distribution at the meeting should reach the Coast Guard no later than November 12, 2003. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Committee Administrator no later than November 4, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under **ADDRESSES** as soon as possible.

Dated: October 22, 2003.

R.F. Duncan,

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

[FR Doc. 03-27288 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4819-N-04]

Notice of Proposed Information Collection: Notice of Funding Availability (NOFA) for the Office of Healthy Homes and Lead Hazard Control Programs

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the Notice of Funding Availability for Healthy Homes and Lead Hazard Programs will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 29, 2003.

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: Gail Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Matthew E. Ammon, Department of Housing and Urban Development, 451 7th Street, SW., Room P3206, Washington, DC 20410, telephone number (202) 755-1785 extension 158 (this is not a toll-free number). Hearing-or-speech-impaired persons may access the number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork

Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title of Proposal: Notice of Funding Availability (NOFA) for the Office of Healthy Homes and Lead Hazard Control Programs.

OMB Control Number, if applicable: 2539-0015.

Description of the need for the information and proposed use: This information collection is required in conjunction with the issuance of NOFAs announcing the availability of approximately \$150,000,000 for Healthy Homes and Lead Hazard Control Programs. Grants are authorized under Title X of the Housing and Community Development Act of 1992, Pub. L. 102-550, Section 1011 and other legislation.

Agency Form Numbers: None.

Members of Affected Public: Potential applicants include a State, tribal, local governments, not-for-profit institutions and for-profit firms located in the U.S.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Task	Number of respondents	Frequency of responses	Hours per response	Burden hours
Application Development	250	1	80	20000
Award of Grant	80	1	16	1280

Total Estimated Burden Hours: 21,280.

Number of copies to be submitted to the Office of Lead Hazard Control for evaluation: Original and three (3) copies.

Status of the proposed information collection: This is a revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: October 23, 2003.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03-27289 Filed 10-29-03; 8:45 am]

BILLING CODE 4210-70-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4819-N-05]

Notice of Proposed Information Collection: Healthy Homes and Lead Hazard Control Grant Programs Data Collection—Progress Reporting

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The revised information collection requirement described below will be 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 proposals.

DATES: *Comments Due Date:* December 29, 2003.

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: Gail Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room P-3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Matthew E. Ammon at (202) 755-1785, ext. 158 (this is not a toll-free number). Hearing-or-speech-impaired persons may access the number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Department is submitting the revised information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected

agencies concerning the proposed collection of information to: (1) Evaluate whether the revised 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 revised collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronics submission of responses.

This Notice also lists the following information:

Title of Proposal: Healthy Homes and Lead Hazard Control Grant Programs Data Collection—Progress Reporting.

OMB Control Number, if applicable: 2539-0008.

Description of the need for the information and proposed use: This data collection is designed to provide timely information to HUD regarding the implementation progress of the grantees on carrying out Healthy Homes and Lead Hazard Control Grant Programs. The information collection will also be used to provide Congress with status reports as required by the Residential Lead-Based Paint Hazard Reduction Act (Title X of the Housing and Community Development Act of 1992).

Agency form numbers, if applicable: HUD-96006.

Members of affected public: State, tribal, local governments, not-for-profit institutions and for-profit firms located in the U.S. and its territories.

Estimation of the total numbers of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: Number of respondents=210; Frequency of response=4; Hours of response=8; Total Burden Hours=6,720.

Status of the proposed information collection: Revision.

Additional Information: The obligation to respond to this information collection is mandatory. Due to the improvements and simplification made to the reporting process, we expect the actual total burden hours to be substantially less than the estimated total burden hours.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: October 23, 2003.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03-27290 Filed 10-29-03; 8:45 am]

BILLING CODE 4210-70-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Wildlife and Plants; Candidate Conservation Agreement and Best Available Information for Slickspot Peppergrass (*Lepidium papilliferum*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received the "Candidate Conservation Agreement for the Slickspot Peppergrass (*Lepidium papilliferum*)" (CCA), a document authored by representatives from the Idaho Governor's Office of Species Conservation, the Idaho Department of Agriculture, the Idaho Department of Fish and Game, the Idaho Department of Lands, the Idaho Army National Guard, the Bureau of Land Management (BLM), and several private property owners who hold grazing permits on BLM-managed and maintained lands, collectively referred to as Cooperating Parties. The CCA commits the Cooperating Parties to implementing conservation measures to prevent and minimize threats to *L. papilliferum*. We are seeking public comment on the CCA because the Service will be making a determination by January 15, 2004, on whether or not it will list *L. papilliferum* under the Endangered Species Act (Act) and must consider in its listing determinations all pertinent biology, threats, and conservation agreements for the species. We also seek public comment on a document compiled by the Service, "Best Available Information on *Lepidium papilliferum*" (Available Information), because we will be considering information in this document in making a final listing determination for the species.

DATES: We will accept comments and information pertaining to the CCA and the Available Information through November 14, 2003. Comments must be received by 5 p.m. on the closing date. Any comments that are received after the closing date may not be considered. No extensions to the public comment will be granted due to the short time

frame for publication of the final listing determination by January 15, 2004.

ADDRESSES: Comments should be addressed to Jeff Foss, Field Supervisor, Snake River Fish and Wildlife Office, 1387 South Vinnell Way, Room 368, Boise, ID 83709; facsimile number (208) 378-5262; electronic address fw1srbocomment@fws.gov. Please put "LEPA" in the subject line of all comments. See **SUPPLEMENTARY INFORMATION**, Public Review and Comments.

FOR FURTHER INFORMATION CONTACT: Jeff Foss, Field Supervisor, at the above address or by calling (208) 378-5243.

SUPPLEMENTARY INFORMATION: Public Review and Comments

Comments are solicited on both the CCA and the Available Information for *Lepidium papilliferum*. Individuals wishing copies of either or both of the these documents should contact the office and personnel listed in the **ADDRESSES** section or locate these documents online at <http://idahoes.fws.gov>. Documents also will be available for public inspection, by appointment, during normal business hours at the Snake River Fish and Wildlife Office (see **ADDRESSES**).

All comments received, including names and addresses, will become part of the Service's administrative record and may be released to the public. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

Background

On July 15, 2002, the Service published a proposed rule (64 FR 46441) to list *Lepidium papilliferum* as endangered under the Act. A final listing decision was due by July 15, 2003. Comments were solicited from both the public and 12 independent scientists in an initial 60-day public comment period that opened on July 18, 2002, and closed on September 13, 2002. On September 25, 2002, we reopened the comment period for an additional 60 days to allow time for all interested parties to submit written comments on the proposal (67 FR 60206). The second comment period closed on November 25, 2002. On July 18, 2003, due to substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing rule, we

announced a 6-month extension of the deadline for our final determination on whether to list *L. papilliferum*. An additional 30-day public comment period was opened on July 18, 2003, and closed on August 18, 2003. A final listing determination is due by January 15, 2004. The extended time is being used to update the best available information on *L. papilliferum*, using information from our files, information received during the two 60-day comment periods, and information received during the 30-day comment period associated with the extension.

An additional intent of the extension was to explore the possibility of a candidate conservation agreement for *Lepidium papilliferum* with cooperators from Idaho. Subsequently, the CCA was developed by the Cooperating Parties with technical assistance from the Service on policy and science. Its purpose is to implement conservation measures for *L. papilliferum* that will ensure the conservation of the plant and its habitat while maintaining predictable and sustainable levels of use for current and future activities on the lands. It is also meant to provide a means of protecting and conserving the species and its habitat through the mutual and voluntary commitment of the Cooperating Parties. The CCA was developed using criteria laid out in the final Policy for the Evaluation of Conservation Effort, of June 13, 2003 (68 FR 37102). This policy applies to our evaluation of all formalized conservation efforts when making listing decision for species not listed. It identifies criteria the Service will use to evaluate the certainty of implementation and effectiveness of such formalized conservation efforts that have not yet been implemented or have been recently implemented and have not yet demonstrated effectiveness at the time of a listing decision. Comments received on the CCA will be used by the Service as it considers the CCA in its final listing determination for *L. papilliferum*. The comments will also be made available to the Cooperating Parties of the CCA.

Dated: October 22, 2003.

David B. Allen,

Regional Director, Fish and Wildlife Service.

[FR Doc. 03-27319 Filed 10-29-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Leases and Permits, 25 CFR 162

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed renewal of an information collection.

SUMMARY: The Bureau of Indian Affairs (BIA) is seeking comments on the proposed renewal of the information collection, Leases and Permits, 1076-0155. This action is required by the Paperwork Reduction Act.

DATE: Submit comments on or before December 29, 2003.

ADDRESSES: Send comments to Ben Burshia, Chief, Division of Real Estate Services, Office of the Deputy Bureau Director—Trust Services, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop 4513 MIB, Washington, DC 20240. Submissions by facsimile should be sent to (202) 219-1255. Electronic submission of comments is not available at this time.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection request from Ben Burshia at (202) 219-1195.

SUPPLEMENTARY INFORMATION: This collection of information is being renewed with substantially no change. However, as previously planned 3 years ago, the collection has been placed in two new subparts, Subpart C for Residential Leases, and Subpart D for Business Leases. Previously, both kinds of leases were in subpart F. There is substantially no change in the information requested. However, after careful review with field personnel, the number of annual responses and annual hours has increased by about 50 percent. We are also adding the filing fee which was omitted during the last clearance.

Request for Comments: The Bureau of Indian Affairs requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents,

such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 4526, during the hours of 8:30 a.m. to 4:30 p.m., e.s.t., Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB Control Number: 1076-0155.

Type of Review: Renewal.

Title: Leases and Permits, 25 CFR 162.

Brief Description of Collection:

Generally trust and restricted land may be leased by Indian land owners, with the approval of the Secretary of the Interior, except when specified by a specific statute. The Secretary requests information on the documentation collection initiated when processing a lease on land held in trust or restricted status by an individual Indian or tribe. The Secretary requires the information necessary to satisfy 25 CFR part 162, the information used to determine whether the Secretary should approve a lease, amendment, assignment, sublease, mortgage or related documents. No specific form is used, however in order to satisfy the Federal law, regulation and policy the respondents supply information and data, in accordance with 25 CFR part 162.

Respondents: Possible respondents include: Land owners of trust or restricted Indian land, both tribal and individual, wanting to lease their land or someone wanting to lease trust or restricted Indian land.

Number of Respondents: 14,500.

Estimated Time Per Response: The time per response varies from 15 minutes to 4 hours.

Frequency of Response: This is a one-time collection per lease approval.

Total Annual Responses: 121,140.

Total Annual Burden to Respondents: 106,065.

Total Annual Fees from Respondents: BIA collects fees for processing submitted documents, as set forth in section 162.241 or 162.616. The minimum administrative fee is \$10.00 and the maximum administrative fee is \$500.00. The average total

administrative fee collected is \$250.00, which is collected approximately 7,500 times, totaling \$1,812,500.

Dated: October 24, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03-27366 Filed 10-29-03; 8:45 am]

BILLING CODE 4310-W7-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010-0042).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "30 CFR Part 208—Sale of Federal Royalty Oil; Royalty-in-Kind (RIK) Program (Form MMS-4070, Application for the Purchase of Royalty Oil)."

DATES: Submit written comments on or before December 29, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225-0165. If you use an overnight courier service, our courier address is Building 85, Room A-614, Denver Federal Center, Denver, Colorado 80225-0165. You may also e-mail your comments to us at mrm.comments@mms.gov. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also, include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231-3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone: (303) 231-3211, FAX: (303) 231-3781, or e-mail: sharron.gebhardt@mms.gov.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 208—Sale of Federal Royalty Oil; Royalty-in-Kind

(RIK) Program (Form MMS-4070, Application for the Purchase of Royalty Oil).

OMB Control Number: 1010-0042.

Bureau Form Number: Form MMS-4070.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The MMS performs the royalty management functions for the Secretary.

"Royalty oil" is crude oil produced from leased Federal lands, both onshore and offshore, in instances in which the Government exercises the option to accept a lessee's royalty payment in oil rather than in money. Title to the oil is transferred to the Government and then sold to an eligible refiner. When the Secretary determines that small refiners do not have access to adequate supplies of oil, the Secretary may dispose of any oil taken as royalty by conducting a sale of such oil, or by allocating it to eligible refiners.

When the Secretary decides to offer royalty oil taken in kind for sale to eligible refiners, MMS will publish a "Notice of Availability of Royalty Oil" (NOA) in the **Federal Register**, and other printed media, when appropriate. The NOA includes administrative details concerning the application, the allocation, and the contract award process for the royalty oil. The refiners interested in purchasing royalty oil will submit the Application for the Purchase of Royalty Oil, Form MMS-4070, in accordance with instructions in the Notice, and with instructions issued by MMS for completion of the form. The MMS uses the information collected on the Form MMS-4070 to determine if the applicant meets eligibility requirements to contract to purchase royalty oil. Information collected also provides a basis for the allocation of available royalty oil among qualified refiners. Responses to this information collection are necessary for refiners to participate in royalty oil sales.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is voluntary for those respondents requesting to participate in this program.

We are revising this ICR, OMB Control Number 1010-0042, to include additional reporting requirements contained in 30 CFR Part 208 that were

not approved under the original OMB approval for this ICR. We also changed the title to more closely reflect the information we are collecting. We changed the ICR title from "Application of the Purchase of Royalty Oil" to "30 CFR Part 208—Sale of Federal Royalty

Oil; Royalty-in-Kind (RIK) Program (Form MMS-4070, Application for the Purchase of Royalty Oil)."

Frequency of Response: On occasion.

Estimated Number and Description of Respondents: 19 small oil refiners.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 20.25 hours.

The following chart shows the breakdown of the estimated burden hours by the respective CFR section and paragraph:

RESPONDENT ANNUAL BURDEN HOUR CHART

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
208.4(a)	Royalty oil sales to eligible refiners (a) Determination to take royalty oil in kind. * * * The Secretary will review these items [submitted by small refiners] and will determine whether eligible refiners have access to adequate supplies of crude oil * * *. (Determination process)	Burden covered by OMB Control Number 1010-0119.		
208.4(d)	Royalty oil sales to eligible refiners (d) Interim sales. * * * The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase. * * *. (Determination process)	Burden covered by OMB Control Number 1010-0119. See § 208.4(a)		
208.6(a) & (b)	General application procedures (a) To apply for the purchase of royalty oil, an applicant must file a Form MMS-4070 with MMS in accordance with instructions provided in the "Notice of Availability of Royalty Oil" and in accordance with any instructions issued by MMS for completion of Form MMS-4070. The applicant will be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the royalty oil for which it is applying, or other such proof of surety coverage, as deemed acceptable by MMS. The letter of intent must be submitted with a completed Form MMS-4070. (b) In addition to any other application requirements specified in the Notice, the following information is required on Form MMS-4070 at the time of application: * * * (Application process)	1.25	8	10
208.7(a)	Determination of eligibility (a) The MMS will examine each application and may request additional information if the information in the application is inadequate. * * * (Application process)	0.25	1	0.25
208.8(a)	Transportation and delivery (a) * * * The purchaser must have physical access to the oil at the alternate delivery point and such point must be approved by MMS. (Application process)	1	1	1
208.8(b)	Transportation and delivery (b) * * * If the delivery point is on or immediately adjacent to the lease, the royalty oil will be delivered without cost to the Federal Government as an undivided portion of production in marketable condition at pipeline connections or other facilities provided by the lessee, unless other arrangements are approved by MMS. If the delivery point is not on or immediately adjacent to the lease, MMS will reimburse the lessee the reasonable cost of transportation to such point in an amount not to exceed the transportation allowance determined pursuant to 30 CFR part 206. * * * (Application process)	Burden covered by OMB Control Number 1010-0140. This provision is no different than transportation allowances allowed in Part 206 for royalties paid in value. The lessee enters allowance amount on Form MMS-2014.		

RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
208.9(a)	Agreements (a) A purchaser must submit to MMS two copies of any written third-party agreements, or two copies of a full written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point of delivery under the contract to the purchaser's refinery. In addition, the purchaser must submit copies of agreements pertaining to quality differentials which may occur between leases and delivery points. (Application process)	1	8	8
208.10(d)	Notices (d) After MMS notification that royalty oil will be taken in kind, the operator shall be responsible for notifying each working interest on the Federal lease. * * * (Application process)	Burden covered by OMB Control Number 1010–0126.		
208.10(e)	Notices (e) A purchaser cannot transfer, assign, or sell its rights or interest in a royalty oil contract without written approval of the Director, MMS. * * * Without express written consent from MMS for a change in ownership, the royalty oil contract shall be terminated. * * * (Application process)	1	1	1
208.11(a), (d), and (e)	Surety requirements (a) The eligible purchaser, prior to execution of the contract, shall furnish an "MMS-specified surety instrument," in an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period, plus related administrative charges. * * *. (d) The "MMS-specified surety instrument" shall be in a form specified by MMS instructions or approved by MMS. * * *. (e) All surety instruments must be in a form acceptable to MMS and must include such other specific requirements as MMS may require adequately to protect the Government's interests. (Sureties Forms MMS–4071 and MMS–4072)	Burden covered by OMB Control Number 1010–0135.		
208.11(b)	Surety requirements (b) * * * The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of its intent not to renew at least 30 days prior to the anniversary date. * * * (Sureties Forms MMS–4071 and MMS–4072)	Burden covered by OMB Control Number 1010–0135.		
208.15	Audits Audits of the accounts and books of lessees, operators, payors, and/or purchasers of royalty oil taken in kind may be made annually or at such other times as may be directed by MMS. * * *	PRODUCE RECORDS Office of Regulatory Affairs determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exception.		
Total		4.5	19	20.25

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that 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. Before submitting an ICR to OMB, the PRA Section 3506(c)(2)(A) requires each agency " * * * to provide notice * * * and otherwise consult with members of

the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden

on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual

operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request, and the ICR will also be posted on our web site at http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.

Public Comment Policy: We will post all comments in response to this notice on our web site at http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public 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 request that we withhold your name and/or address, 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.

MMS Acting Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: October 24, 2003.

Lucy Querques Denett,
Associate Director for Minerals Revenue Management.
[FR Doc. 03-27361 Filed 10-29-03; 8:45 am]
BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 27, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by November 14, 2003.

Carol D. Shull,
Keeper of the National Register of Historic Places.

FLORIDA

Baker County

Glen Saint Mary Nurseries Company, 7703
Glen Nursery Rd., Glen St. Mary, 03001111

KENTUCKY

Jefferson County

Struss House, 1920 Winston Ave., Louisville,
03001112

MARYLAND

Anne Arundel County

Owensville Historic District, Owensville Rd.
and Owensville-Sudley Rd., Owensville,
03001117
Woodwardville, 937 to 987 Patuxent Rd. and
2811 to 2825 5th Ave., Woodwardville,
03001115

Baltimore County

Stoneleigh Historic District, Roughly
bounded by Regester Ave., York Rd.,
Hatherleigh Rd., and Kenleigh Rd.,
Towson, 03001113

Montgomery County

Johnson-Wolfe Farm, 23900 Old Hundred
Rd., Comus, 03001114

Queen Anne's County

Legg's Dependence, 0200 Long Creek Court,
Stevensville, 03001116

MASSACHUSETTS

Hampden County

Springfield Safe Deposit and Trust Company,
127-131 State St., Springfield, 03001118

NEW YORK

Delaware County

West Meredith Cemetery, Cty Rte. 14, West
Meredith, 03001119

Franklin County

Brighton Town Hall, 12 Cty Rd. 31, Brighton,
03001121

Sullivan County

Woodbourne Reformed Church Complex, NY
42, Woodbourne, 03001120

PENNSYLVANIA

Chester County

Ker-Feal, 1081 Bodine Rd., Chester Springs,
West Pikeland Township, 03001125

Lehigh County

Ehrenhardt, Jacob Jr., House, 55 S. Keystone
Ave., Emmanus, 03001123

Montgomery County

Knipe—Moore—Rupp Farm, Hancock, Rd.
and Prospect Ave, North Wales, Upper
Gwynedd Township, 03001124
Narbrook Park Historic District, Narbrook Rd.
and Windsor Ave., Narberth, 03001122

TEXAS

Hays County

Downtown Buda Historic District, Roughly
bounded by Elm St., Main St., China St.,
and Austin St., Buda, 03001126

WASHINGTON

Whatcom County

Immanuel School of Industries—Department
of Public Welfare, 1303 Astor St.,
Bellingham, 03001127

WISCONSIN

Rock County

Hilton House Hotel, 434 E. Grand Ave.,
Beloit, 03001128

A request for a move has been made for the
following resource:

IDAHO

Ada County

Congregation Beth Israel Synagogue, 1102
State St., Boise, 75000432

A request for removal has been made for
the following resources:

IOWA

Keokuk County

Delta Covered Bridge, S of Delta off IA 108
across North Skunk River, Delta vicinity,
74000795

Black Hawk County

Crane Creek Bridge (Highway Bridges of Iowa
MPS), Marquis Rd. Over Crane Cr.,
Waterloo vicinity, 98000769

[FR Doc. 03-27299 Filed 10-29-03; 8:45 am]

BILLING CODE 4312-51-P

DEPARTMENT OF THE INTERIOR**National Park Service****National Register of Historic Places;
Notification of Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 4, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by November 14, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ALABAMA**Barbour County**

Clayton Historic District, Roughly along W. Louisville Ave., Midway St., Brouder St., and Eufala Ave., Clayton, 03001131

Dallas County

Old Town Historic District Boundary Increase and Additional Documentation, Jefferson Davis Ave.; area roughly bounded by Broad, Dallal, U.S. 80 and Franlin; Selma Ave.; and Franklin St., Selma, 03001137

Jefferson County

Country Club Historic District, Roughly bounded by Highland Ave, 33rd St., 38th St. Country Club Rd., Pawnee Ave. and 28th St., Birmingham, 03001133

Hanover Place Historic District, Roughly along Hanover Circle, 11th Ave., 26th Ave., Caldwell Park, and Highland Ave., Birmingham, 03001132

Milner Heights Historic District, Roughly along Niazuna Ave., Caldwell Ave., Miller Court, Milner Crescent, Arlington Ave., and 15th Ave., Birmingham, 03001130

South Highlands of East Lake Historic District, Roughly bounded by Oak Rd., 86th Place, 8th Ave., Vanderbilt St., and 5th Ave., Birmingham, 03001136

Woodlawn Historic District, Roughly bounded by 1st Ave. N, 47th St. N, 61st St. N, and I-20/59, Birmingham, 03001129

Madison County

Building at 305 Jefferson, (Downtown Huntsville MRA) 305 Jefferson St., Huntsville, 03001134

Marshall County

Guntersville City School, 1120 Rayburn Ave., Guntersville, 03001135

FLORIDA**Sarasota County**

Rosemary Cemetery, 851 Central Ave., Sarasota, 03001143

GEORGIA**Thomas County**

Hollywood Plantation, 1701 Old Monticello Rd., Thomasville, 03001138

KANSAS**Harvey County**

Newton Main Street Historic District I, 200 through 215 and 203 through 301 N. Main St., Newton, 03001145
Newton Main Street Historic District II, 411-825 N. Main St. and 414-726 N. Main St., Newton, 03001146

LOUISIANA**Livingston Parish**

Deslattes House, 15620 LA 16, French Settlement, 03001139

MISSISSIPPI**Warren County**

South Cherry Street Historic District, (Vicksburg MPS) Along Cherry and Drummond Sts. from Harrison St. to Bowmar St. and including Chambers and Baum Sts., Vicksburg, 03001140

NEW MEXICO**Los Alamos County**

Bayo Road, (Homestead and Ranch School Era Roads and Trails of Los Alamos, New Mexico MPS) Approx. 420 NW of jct. of Diamond Dr. and San Ildefonso Rd., Los Alamos, 03001141

NEW YORK**Albany County**

Coeymans—Bronck Stone House, NY 144, Coeymans, 03001148

Columbia County

Houses at 37-47 North Fifth St., 37-47 N. Fifth St., Hudson, 03001142

Erie County

Delaware Avenue Methodist Episcopal Church, 339 Delaware Ave., Buffalo, 03001149

New York County

Bank of the Metropolis, 31 Union Square West, New York, 03001153
Brooks and Hewitt Halls, Jct. W. 116th St. and Claremont Ave., New York, 03001151
Milbank, Brinckerhoff, and Fiske Halls, Roughly bounded by W. 119th and W. 120th Sts., and Broadway and Claremont Aves., New York, 03001152
Students' Hall, Barnard College, 3005 Broadway, New York, 03001150

Schoharie County

Upper Middleburgh Cemetery, Huntersland Rd., Middleburgh, 03001144

Suffolk County

Cold Spring Harbor Fire District Hook and Ladder Company Building, Main St. at Elm Place, Cold Spring Harbor, 03001147

PENNSYLVANIA**Bradford County**

Welles, Ellen and Charles F., House (Boundary Increase), 3 Grovedale Ln., Wyalusing, 03001156

York County

Ashton—Hursh House, 204 Limekiln Rd. (Fairview Township), New Cumberland, 03001155

TENNESSEE**Davidson County**

Tennessee State Library and Archives, 403 7th Ave. N., Nashville, 03001154

Dyer County

Pleasant Hill Cemetery, Approx. .7 mi. W. of cattle gate at end of Cemetery Rd., Finley, 03001159

Maury County

Mount Pleasant Commercial Historic District, (Mount Pleasant MPS) Roughly bounded by N. and S. Main Sts., Public Sq. and Hay Long Ave., Mount Pleasant, 03001160

Robertson County

Red River Blockhouse Number 1, (Civil War Historic and Historic Archeological Resources in Tennessee MPS) 5461 U.S. 41, Adams, 03001157

Smith County

Battery Knob Earthworks, (Civil War Historic and Historic Archeological Resources in Tennessee MPS) Address Restricted, Carthage, 03001158

TEXAS**Bexar County**

Carver, George Washington, Library and Auditorium, 226 N. Hackberry St., San Antonio, 03001162

Galveston County

Levy, E.S., Building, (Galveston Central Business District MRA) 2221-2225 Market St., Galveston, 03001163

McLennan County

Forsgard Homestead, 1116-1122 N. 4th St., Waco, 03001161

VERMONT**Grand Isle County**

Hill, Ira, House, 2304 Main St., Isle La Motte, 03001164

Washington County

Union Co-operative Store Bakery, 46½ Granite St., Barre, 03001166

WISCONSIN**Milwaukee County**

Pabst Brewing Company Complex, Roughly bounded by Highland Ave., 11th, Winnebago and 9th Sts., Milwaukee, 03001165

Vernon County

Bekkedal Leaf Tobacco Warehouse, 504 E.
Decker, Viroqua, 03001167

[FR Doc. 03-27300 Filed 10-29-03; 8:45 am]

BILLING CODE 4312-51-P

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****Notice of Proposed Information Collection for 1029-0057 and 1029-0087**

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information under 30 CFR Part 882, Reclamation of private lands; and Form OSM-76, Abandoned Mine Land Problem Area Description form. These information collection activities were previously approved by the Office of Management and Budget (OMB), and assigned them clearance numbers 1029-0057 and 1029-0887, respectively.

DATES: Comments on the proposed information collection must be received by December 24, 2003, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210-SIB, Washington, DC 20240. Comments may also be submitted electronically to jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208-2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 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 recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR Part 882, Reclamation on private lands; and (2) Form OSM-76, Abandoned Mine Land Problem Area Description form. OSM

will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submissions of the information collection requests to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; (4) the Bureau form number; and (5) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Reclamation on Private Lands, 30 CFR 882.

OMB Control Number: 1029-0057.

Summary: Pub. L. 95-87 authorizes Federal, State, and Tribal governments to reclaim private lands and allows for the establishment of procedures for the recovery of the cost of reclamation activities on privately owned lands. These procedures are intended to ensure that governments have sufficient capability to file liens so that certain landowners will not receive a windfall from reclamation.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments and Indian tribes.

Total Annual Responses: 1.

Total Annual Burden Hours: 16.

Title: Abandoned Mine Land Problems Area Description Form, OSM-76.

OMB Control Number: 1029-0087.

Summary: This form will be used to update the Office of Surface Mining Reclamation and Enforcement's inventory of abandoned mine lands. From this inventory, the most serious problem areas are selected for reclamation through the apportionment of funds to States and Indian tribes.

Bureau Form Number: OSM-76.

Frequency of Collection: On occasion.

Description of Respondents: State governments and Indian tribes.

Total Annual Responses: 1,800.

Total Annual Burden Hours: 4,000.

Dated: October 24, 2003.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 03-27296 Filed 10-29-03; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****Notice of Proposed Information Collection for 1029-0080 and 1029-0089**

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed authority for two collections of information: 30 CFR Part 702 regarding the exemption of coal extraction incidental to the extraction of other minerals; and 30 CFR Part 850 authorizing State regulatory authorities to develop blaster certification programs. These information collection activities were previously approved by the Office of Management and Budget (OMB), and assigned them clearance numbers 1029-0089 and 1029-0080, respectively.

DATES: Comments on the proposed information collection must be received by December 29, 2003 to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, Room 210-SIB, Washington, DC 20240. Comments may also be submitted electronically to jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208-2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 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 recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are

contained in 30 CFR Part 702, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; and 30 CFR Part 850, Permanent regulatory program requirements—standards for certification of blasters. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, 30 CFR Part 702.

OMB Control Number: 1029-0089.

Summary: This part implements the requirement in Section 701 (28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which grants an exemption from the requirements of SMCRA to operators extracting not more than 16 $\frac{2}{3}$ percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

Bureau Form Number: None.

Frequency of Collection: Once and annually thereafter.

Description of Respondents:

Producers of coal and other minerals.

Total Annual Responses: 57.

Total Annual Burden Hours: 581.

Title: Permanent regulatory program requirements—standards for certification of blasters, 30 CFR 850.

OMB Control Number: 1029-0080.

Summary: This part establishes the requirements and procedures applicable to the development of regulatory programs for the training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations.

Bureau firm Number: None.

Frequency of Collection: Once.

Description of Respondents: State regulatory authorities.

Total Annual Responses: 1.

Total Annual Burden Hours: 173.

Dated: October 24, 2003.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 03-27297 Filed 10-29-03; 8:45 am]

BILLING CODE 4310-OS-M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1054 and 1055 (Preliminary)]

Light-Walled Rectangular Pipe and Tube From Mexico and Turkey

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines,² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Mexico and Turkey of light-walled rectangular pipe and tube, provided for in subheading 7306.60.5000 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase

of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 9, 2003, a petition was filed with the Commission and Commerce by California Steel and Tube, City of Industry, CA; Hannibal Industries, Inc., Los Angeles, CA; Leavitt Tube Co., Chicago, IL; Maruichi American Corp., Santa Fe Springs, CA; Northwest Pipe Co., Portland, OR; Searing Industries, Inc., Rancho Cucamongo, CA; Vest, Inc., Los Angeles, CA; and Western Tube and Conduit Corp., Long Beach, CA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of light-walled rectangular pipe and tube from Mexico and Turkey. Accordingly, effective September 9, 2003, the Commission instituted antidumping duty investigations Nos. 731-TA-1054 and 1055 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 16, 2003 (68 FR 54244). The conference was held in Washington, DC, on September 30, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 24, 2003. The views of the Commission are contained in USITC Publication 3644 (October 2003), entitled *Light-Walled Rectangular Pipe and Tube from Mexico and Turkey: Investigations Nos. 1054 and 1055 (Preliminary)*.

By order of the Commission.

Issued: October 24, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03-27348 Filed 10-29-03; 8:45 am]

BILLING CODE 7020-02-P

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Commissioner Daniel R. Pearson not participating.

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Motorola/Engelhard Fuel Cell Research**

Notice is hereby given that, on October 1, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Motorola/Engelhard Fuel Cell Research has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Motorola Inc., Motorola Labs, Tempe, AZ; and Engelhard Corp., Iselin, NJ. The nature and objectives of the venture are to develop and demonstrate a methanol-fueled steam reformer to generate hydrogen for a miniature fuel cell power source.

Dorothy B. Fountain,
Deputy Director of Operations, Antitrust Division.
[FR Doc. 03-27379 Filed 10-29-03; 8:45 am]
BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Multi-Terabyte Tape Storage**

Notice is hereby given that, on September 30, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Multi-Terabyte Tape Storage has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced MicroSensors, Inc., Shrewsbury, MA has been added as a party to this venture. Also, Read-Rite Corporation, Fremont, CA has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Multi-Terabyte Tape Storage intends to file additional written notification disclosing all changes in membership.

On October 29, 2002, Multi-Terabyte Tape Storage filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 5, 2002 (67 FR 72429).

Dorothy B. Fountain,
Deputy Director of Operations, Antitrust Division.
[FR Doc. 03-27378 Filed 10-29-03; 8:45 am]
BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Federal Bureau of Investigation****Meeting of the CJIS Advisory Policy Board**

AGENCY: Federal Bureau of Investigation (FBI).

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, make appropriate recommendations to the FBI Director. The programs administered by the FBI CJIS Division are: the Integrated Automated Fingerprint Identification System, the Interstate Identification Index, Law Enforcement Online, National Crime Information Center, the National Instant Criminal Background Check System, the National Incident-Based Reporting System, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Roy G. Weise at (304) 625-2730, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A

requestor will ordinarily be allowed no more than 15 minutes to present a topic.

DATES AND TIMES: The APB will meet in open session from 8:30 a.m. until 5 p.m., on December 3-4, 2003.

ADDRESSES: The meeting will take place at the Grant Hyatt on Union Square, 345 Stockton Street, San Francisco, California, telephone (415) 398-1234.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Diane M. Shaffer, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0149, telephone (304) 625-2615, facsimile (304) 625-5090.

Dated: October 16, 2003.

Roy G. Weise,
Designated Federal Employee, Criminal Justice Information Services Division, Federal Bureau of Investigation.
[FR Doc. 03-27363 Filed 10-29-03; 8:45 am]
BILLING CODE 4410-02-M

DEPARTMENT OF JUSTICE**Office of Justice Programs****Agency Information Collection Activities: Proposed Collection; Comments Requested**

Action: 60-day emergency notice of information collection under review: study on the response of law enforcement to emergency calls involving domestic violence.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by November 3, 2003. 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 and Regulation Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Comments are encouraged and will be accepted for 60 days until December 29, 2003.

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

Bernie Auchter, Senior Social Science Analyst, National Institute of Justice, 810 7th Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. 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 agencies 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 information:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Study on the Response of Local Law Enforcement to Emergency Calls Involving Domestic Violence.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number none. National Institute of Justice, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected public includes law enforcement administrators or other persons responsible for emergency domestic violence policies and procedures within sampled jurisdictions. The survey will collect information on police policies and procedures for responding to emergency domestic violence calls. Key questions are: (1) How do local law enforcement agencies nationwide respond to domestic violence emergency calls for service? and (2) How do local law enforcement agencies and their dispatch units (including 911 centers) coordinate, prioritize, and decide on the appropriate operational response to domestic violence calls for service? The data will be used to advise the National Institute of Justice, The Violence Against Women Office, and the Subcommittee on

Commerce, Justice, and State Appropriations of the U.S. Senate and House of Representatives Appropriations Committee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of respondents is 405. The survey will take an average of 30 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with this collection:* An estimated 203 hours of public burden is associated with this collection.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 21, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03-27377 Filed 10-29-03; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 17, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on 202-693-4129 (this is not a toll-free number) or E-Mail: king.darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202-395-7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of a currently approved collection.

Title: Main Fan Operation and Inspection.

OMB Number: 1219-0030.

Affected Public: Business or other for-profit.

Type of Response: Recordkeeping.

Frequency: Daily.

Number of Respondents: 7.

Number of Annual Responses: 3,465.

Estimated Time per Response: 30 minutes.

Total Burden Hours: 1,733.

Total Annualized Capital/Startup

Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$1,470.

Description: Title 30, CFR 57.22204, which is applicable only to specific underground mines that are categorized as gassy, requires main fans to have pressure-recording systems. Main fans are to be inspected daily while operating if persons are underground, and certification of the inspection is to be made by signature and date. These records are used by the mine operator and MSHA to maintain a constant surveillance on mine ventilation, and to ensure that unsafe conditions are identified early and corrected. Technical consultants may occasionally review the information when solving problems.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of a currently approved collection.

Title: Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection (Pertains to Surface Coal Mines).

OMB Number: 1219-0083.

Affected Public: Business or other for-profit.

Type of Response: Recordkeeping.
Frequency: Each shift.
Number of Respondents: 1,514.
Number of Annual Responses: 513,246.

Estimated Time per Response: 1.5 hours.

Total Burden Hours: 769,869.

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$0.

Description: 30 CFR 77.1713 requires operators of surface coal mines and surface facilities to keep records of the results of mandatory examinations for hazardous conditions. Records consist of the nature and location of any hazardous condition found and the actions taken to abate the hazardous condition.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of a currently approved collection.

Title: Explosive Materials and Blasting Units (pertains to metal and nonmetal underground mines deemed to be gassy).

OMB Number: 1219-0095.

Affected Public: Business or other for-profit.

Type of Response: Reporting.

Frequency: On occasion.

Number of Respondents: 2.

Number of Annual Responses: 2.

Estimated Time per Response: 1 hour.

Total Burden Hours: 2.

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$0.

Description: In the absence of permissible explosives or blasting units having adequate blasting capacity for metal and nonmetal gassy mines, 30 CFR 57.22606(a) provides procedures by which mine operators shall notify MSHA of all non-approved explosive materials and blasting units to be used prior to their use in underground gassy metal and nonmetal mines. MSHA uses this information to determine that the explosives and procedures to be used are safe for blasting in a gassy underground mine.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03-27352 Filed 10-29-03; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 20, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202-693-4129 (this is not a toll-free number) or E-Mail: king.darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202-395-7316/ this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

This OMB 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 submission of responses.

Agency: Employment and Training Administration.

Type of Review: New collection.

Title: Project Gate.

OMB Number: 1205-0NEW.

Affected Public: Individuals or households.

Frequency: 6 month and 18 month intervals.

Type of Response: Reporting.

Number of Respondents: 3,200.

Number of Annual Responses: 6,400.
Estimated Time per Response: 40 minutes.

Total Burden Hours: 4,267.

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$0.

Description: DOL is seeking OMB approval for a follow-up survey to be conducted as part of the Project GATE (Growing America Through Entrepreneurship) demonstration and evaluation of services for micro enterprise development. Project GATE is a demonstration program designed to assist individuals interested in self-employment to develop their businesses. The survey will help DOL determine whether the program should be replicated on a larger scale.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03-27353 Filed 10-29-03; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 21, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on 202-693-4129 (this is not a toll-free number) or e-mail: king.darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503 (202-395-7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title: The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

OMB Number: 1220-0050.

Affected Public: Individuals or households.

Type of Response: Recordkeeping and Reporting.

Frequency: Quarterly; Weekly; and Annually.

Number of Respondents: 17,374.

Information collection	Annual responses	Average response time (hours)	Annual burden hours
CE Quarterly Interview CAPI Instrument	38,516	1.5	57,774
Quarterly Interview Re-interview	2,118	0.25	530
CD Diary: CE-801, Record of Daily Expenses	15,490	1.75	27,108
CE Diary: CE-802 Household Questionnaire	23,235	0.42	9,681
CE Diary Re-interview, CE-880, CE-880(N)	1,293	0.20	259
Totals	80,652		95,352

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$0.

Description: The Consumer Expenditure Surveys are used to gather information on expenditures, income, and other related subjects. These data are used to periodically update the national Consumer Price Index. In addition the data are used by a variety of researchers in academia, government agencies, and the private sector. The data are collected from a national probability sample of households designed to represent the total civilian non-institutional population.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03-27354 Filed 10-29-03; 8:45 am]

BILLING CODE 4510-24-M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Data Collection Submitted for Public Comment and Recommendation; Local Area Survey of the WIA Performance Measurement System

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance

with the Paperwork Reduction Act of 1995 (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 the collection requirements on respondents can be properly assessed. Through this notice, the Employment and Training Administration is soliciting comments concerning a proposed new collection of data on performance accountability and measurement policies and practices employed by local workforce investment areas (LWIA) under the Workforce Investment Act (WIA).

A copy of the proposed survey can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 29, 2003.

ADDRESSES: Alberta Baker, U.S. Department of Labor, Employment and Training Administration, Office of Policy Development, Evaluation and Research, 200 Constitution Avenue, NW., Room N-5637, Washington DC 20210, (202) 693-3642.

FOR FURTHER INFORMATION CONTACT: Alberta Baker (202) 693-3642.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, Employment and Training Administration seeks to gather information about the performance accountability and measurement system and how this system impacts specific

local area policies, practices, and service delivery under WIA. This survey will enable ETA to collect uniform data across all Local Workforce Investment Areas providing DOL with a snapshot of the performance accountability and measurement system as a whole and, in addition, pointing to areas of potential concern and areas of strength within this system. The data will provide information on local policies and procedures related to performance accountability including the goals established for local areas, the management tools and practices local areas have put in place to help meet these goals, the influence of broader performance measurement system on local service delivery design, and local areas' awareness and assessment of Common Measures, which are to be implemented in all job training and employment programs in 2004.

Performance accountability and measurement have been important features of the nation's workforce investment system. The Workforce Investment Act (WIA) establishes a performance accountability system, the explicit purpose of which (Sec. 136(a)) is "to assess the effectiveness of States and local areas in achieving continuous improvement of workforce investment activities funded under this subtitle." DOL negotiates goals for performance outcomes with each state, and states, in turn, negotiate with their local areas to set local goals. Beyond negotiated performance levels, states can give local areas substantial discretion in designing a system to deliver workforce services. The combination of individually negotiated performance levels and local design discretion suggests there will be

extensive variation among local workforce investment areas regarding policies and practices related to performance measurement and management. This data collection effort will enable DOL to identify the varying approaches and create a national picture of the ways in which this performance measurement system impacts policies and services at the local level.

Further, enormous amounts of resources have been expended in developing the infrastructure required to effectively measure and manage performance. Major investments have been made in MIS systems and in training employees on effective management strategies to meet negotiated levels. However, little is known about exactly what practices local areas are employing to meet measures, how the broad measures in place are impacting local decisions on managing performance, or whether local areas have implemented additional measures that better enable them to monitor and improve their performance. The data collected will enable ETA to fill this information gap and gain a better understanding of how the performance accountability system is actually operating, as well as any areas of concern that arise from the planned implementation of Common Measures in 2004.

II. Review Focus

The Department of Labor is particularly interested in comments that: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the utility, quality and clarity of the information to be collected; and (d) 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.

III. Current Actions

The Department of Labor's Employment and Training Administration will be seeking Office of Management and Budget (OMB) approval to administer a questionnaire to LWIAs on policies and practices related to performance accountability, including their performance goals, and measures and tools they have established to assist in performance management. The data will be used in

two ways: to provide a national snapshot of the performance measurement system and to discern patterns of performance policies and practices among LWIAs.

Agency: Department of Labor Employment and Training Administration.

Type of Review: New.

Title: Local Area Survey of the WIA Performance Measurement System.

Affected Public: Local Workforce Investment Areas.

Total Respondents: 605.

Frequency: Once.

Total Responses: 605.

Average Time Per Response: One hour.

Estimated Total Burden Hours: 605 hours.

Total Burden Cost for Capital and Startup: \$0.

Total Burden Cost for Operation and Maintenance: \$0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: October 23, 2003.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 03-27355 Filed 10-29-03; 8:45 am]

BILLING CODE 4510-30-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that six meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Music: November 17-18, 2003, Room 714 (Heritage and Preservation category, Panel A). This meeting will be closed.

Music: November 18, 2003, Room 714 (Challenge America-Access category, Panel A). A portion of this meeting, from 3:30 p.m. to 4:30 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 10:30 a.m. to 3:30 p.m. and from 4:30 p.m. to 5 p.m., will be closed.

Folk & Traditional Arts: November 18-21, 2003, Room 716 (Challenge America-Access and Heritage and Preservation categories). A portion of this meeting, from 11 a.m. to 12:30 p.m. on November 21st, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30

p.m. on November 18th-20th, and from 9 a.m. to 11 a.m. and 12:30 p.m. to 4:30 p.m. on November 21st, will be closed.

Music: November 19-21, 2003, Room 714 (Challenge America-Access category, Panel B). This meeting will be closed.

Music: November 21, 2003, Room 714 (Heritage and Preservation category, Panel B). A portion of this meeting, from 4 p.m. to 5 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 2:30 p.m. to 4 p.m. and from 5 p.m. to 5:30 p.m., will be closed.

Museums: December 2-4, 2003, Room 716 (Challenge America-Access and Heritage and Preservation categories). This meeting will be closed.

The closed meetings and portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c) (6) of 5 U.S.C. 552b.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5691.

Dated: October 24, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03-27301 Filed 10-29-03; 8:45 am]

BILLING CODE 7537-01-P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board, Committee on Strategy and Budget.

DATE AND TIME: November 7, 2003, 2:30 p.m.-3:30 p.m., Open Session.

PLACE: The National Science Foundation, Stafford One Building, 4201 Wilson Boulevard, Room 130, Arlington, VA 22230.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:**Friday, November 7, 2003***Open Session (2:30 p.m. to 3:30 p.m.)*

Review of the Draft Report in Response to Section 22 of the NSF Authorization Act (December, 2002).

FOR FURTHER INFORMATION CONTACT:

Michael P. Crosby, Executive Office, NSB, (703) 292-7000, <http://www.nsf.gov/nsb>.

Michael P. Crosby,
Executive Officer.

[FR Doc. 03-27488 Filed 10-28-03; 1:03 pm]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION**[Docket No. 52-007]**

**Exelon Generation Company, LLC;
Notice of Acceptance of Application
for Early Site Permit for the Clinton
ESP Site**

On September 25, 2003, the Nuclear Regulatory Commission (NRC, the Commission) received an application from Exelon Generation Company, LLC (Exelon) filed pursuant to Section 103 of the Atomic Energy Act and 10 CFR Part 52, for an early site permit (ESP) for property co-located with the existing Clinton Power Station facility near Clinton, Illinois, hereafter identified as the Clinton ESP site. A notice of receipt and availability of this application was previously published in the **Federal Register** (68 FR 61020; October 24, 2003).

An applicant may seek an ESP in accordance with Subpart A of 10 CFR Part 52 separate from the filing of an application for a construction permit (CP) or combined license (COL) for a nuclear power facility. The ESP process allows resolution of issues relating to siting. At any time during the period of an ESP (up to 20 years), the permit holder may reference the permit in a CP or COL application.

The NRC staff has determined that Exelon has submitted information in accordance with 10 CFR Part 52 that is sufficiently complete and acceptable for docketing. The Docket Number established for this application is 52-007. The NRC staff will perform a detailed technical review of the application, and docketing of the ESP application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will

conduct a hearing in accordance with 10 CFR 52.21 and will receive a report on the application from the Advisory Committee on Reactor Safeguards in accordance with 10 CFR 52.23. If the Commission then finds that the application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue an ESP, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

In accordance with 10 CFR Part 51, the Commission will also prepare an environmental impact statement for the proposed action. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Finally, the Commission will announce, in a future **Federal Register** notice, the opportunity to petition for leave to intervene in the hearing required for this application by 10 CFR 52.21.

A copy of the Exelon ESP application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. It is also accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. The accession number for the application is ML032721596. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov. The application is also available to local residents at the Vespasian Warner Public Library in Clinton, Illinois.

Dated at Rockville, Maryland this 27th day of October 2003.

For the Nuclear Regulatory Commission.

James E. Lyons,

Program Director, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03-27329 Filed 10-29-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION**[Docket Nos. 50-348 and 50-364]**

**Southern Nuclear Operating Company
(SNC), Joseph M. Farley Nuclear Plant,
Units 1 and 2; Notice of Acceptance for
Docketing of the Application
Regarding Renewal of Facility
Operating License Nos. NPF-2 and
NPF-8 for an Additional 20-Year Period**

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Operating License Nos. NPF-2 and NPF-8, which authorize the Southern Nuclear Operating Company (SNC) to operate Joseph M. Farley Nuclear Plant, Units 1 and 2, at 2775 megawatts thermal. The renewed licenses would authorize the applicant to operate Farley Nuclear Plant, Units 1 and 2, for an additional 20-years beyond the period specified in the current licenses. The current operating licenses for Joseph M. Farley Nuclear Plant, Units 1 and 2, will expire on June 25, 2017, and March 31, 2021, respectively.

On September 15, 2003, the Commission's staff received an application from the SNC, filed pursuant to 10 CFR Part 54, to renew the Operating License Nos. NPF-2 and NPF-8 for Joseph M. Farley Nuclear Plant, Units 1 and 2. A Notice of Receipt and Availability of the license renewal application, "Southern Nuclear Operating Company, Joseph M. Farley Nuclear Plant; Notice of Receipt and Availability of Application for Renewal of Facility Operating License Nos. NPF-2 and NPF-8 for an Additional 20-Year Period," was published in the **Federal Register** on October 6, 2003 (68 FR 57715).

The Commission's staff has determined that SNC has submitted information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is sufficiently complete and acceptable for docketing. The current Docket Nos. 50-348 and 50-364 for Operating License Nos. NPF-2 and NPF-8, respectively, will be retained. The Commission's staff will perform a detailed technical review of the application. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of each requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. In accordance with 10 CFR

54.29, the NRC will issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB), and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," dated May 1996. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice. The Commission also intends to hold public meetings to discuss the license renewal process and the schedule for conducting the review. The Commission will provide prior notice of these meetings.

Finally, the Commission will announce in a future **Federal Register** notice, in accordance with the provisions of 10 CFR 2.105, the opportunity to request a hearing and to file a petition for leave to intervene.

Detailed information about the license renewal process can be found under the Nuclear Reactors icon on the NRC's Web page at <http://www.nrc.gov/reactors/operating/licensing/renewal.html>. A copy of the application to renew the operating licenses for Joseph M. Farley Nuclear Plant, Units 1 and 2, is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855-2738, and on the NRC's Web page at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/farley.html> while the application is under review. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. A copy of the application to renew the operating licenses for Joseph M. Farley Nuclear Plant, Units 1 and 2, is also available

electronically through the NRC's Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html> under ADAMS Accession Number ML032721356. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr@nrc.gov.

The staff has verified that a copy of the license renewal application for the Joseph M. Farley Nuclear Plant, Units 1 and 2, is also available to local residents near the Farley Nuclear Plant at the Houston Love Memorial Library, 212 West Burdeshaw Street, Dothan, Alabama 36303-4421.

Dated at Rockville, Maryland, this 24th day of October 2003.

For the Nuclear Regulatory Commission.

Samson S. Lee,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03-27332 Filed 10-29-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos: (Redacted), License Nos: (Redacted), EA (Redacted)]

In the Matter of All Power Reactor Licensees and Research Reactor Licensees Who Transport Spent Nuclear Fuel; Order Modifying License (Effective Immediately)

I

The licensees identified in Attachment 1 to this Order have been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the possession of spent nuclear fuel and a general license authorizing the transportation of spent nuclear fuel [in a transportation package approved by the Commission] in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 50 and 71. This Order is being issued to all such licensees who transport spent nuclear fuel. Commission regulations for the shipment of spent nuclear fuel at 10 CFR 73.37(a) require these licensees to maintain a physical protection system that meets the requirements contained in 10 CFR 73.37(b), (c), (d), and (e).

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility or regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on all licensees identified in Attachment 1 of this Order.¹ These additional security requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of spent nuclear fuel, or may need to be tailored to accommodate the licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of spent nuclear fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat

¹ Attachments 1 and 2 contain SAFEGUARDS INFORMATION and will not be released to the public.

Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the current threat environment, the Commission concludes that the additional security measures must be embodied in an Order consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, and in light of the common defense and security matters identified above which warrant the issuance of this Order, the Commission finds that the public health, safety, and interest require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50 and 71, *it is hereby ordered, effective immediately, that all licenses identified in Attachment 1 to this order are modified as follows:*

A. All Licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the Licensee's security plan. The Licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by November 22, 2003, unless otherwise specified in Attachment 2, or before the first shipment after October 23, 2003, whichever is earlier.

B. 1. All Licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. Any Licensee that considers that implementation of any of the

requirements described in Attachment 2 to this Order would adversely impact the safe transport of spent fuel must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. All Licensees shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.

2. All Licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all additional security measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B1, B2, C1, and C2 above, shall be submitted to the NRC to the attention of the Director, Office of Nuclear Reactor Regulation under 10 CFR 50.4. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for

the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415-1101 or by e-mail to hearingdocket@nrc.gov, and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order

without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 23rd day of October 2003.

For the Nuclear Regulatory Commission.

R. William Borchardt,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 03-27331 Filed 10-29-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-26]

Pacific Gas and Electric Company; Notice of Issuance of Environmental Assessment and Finding of No Significant Impact for the Diablo Canyon Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of a materials license under the requirements of Title 10 of the Code of Federal Regulations, Part 72 (10 CFR Part 72), to the Pacific Gas and Electric Company (the applicant), authorizing the construction and operation of an independent spent fuel storage installation (ISFSI) to be located at the Diablo Canyon Power Plant (DCPP) in San Luis Obispo County, California. The Commission's Office of Nuclear Material Safety and Safeguards has completed its review of the environmental report submitted by the applicant on December 21, 2001, as amended by letter dated October 15, 2002, in support of its application for a materials license. The staff's "Environmental Assessment Related to the Construction and Operation of the Diablo Canyon Independent Spent Fuel Storage Installation" has been issued in accordance with 10 CFR Part 51.

Summary of Environmental Assessment (EA)

Description of the Proposed Action: The proposed licensing action would authorize the applicant to construct and operate a dry storage ISFSI at the DCPP site. The purpose of the ISFSI is to provide for additional interim storage of spent nuclear fuel generated from the operation of the Diablo Canyon Power Plant, Units 1 and 2. The proposed ISFSI would employ the HI-STORM

100 dry cask storage system designed by Holtec International, Inc. The major components of the system include the steel multipurpose canisters (MPCs), each containing 24 or 32 spent fuel assemblies; the concrete overpacks, which provide additional shielding for the MPCs in storage; and the transfer cask, used to move loaded and sealed MPCs from the fuel handling building to the ISFSI. A license issued for an ISFSI under 10 CFR Part 72 is issued for a fixed period not to exceed 20 years. A license holder may apply to the Commission to renew the license prior to its expiration.

Need for the Proposed Action: The Diablo Canyon ISFSI is needed to provide additional spent fuel storage capacity so that the two DCPP reactors can continue to generate electricity beyond 2006, when the storage capacity of the plant's two spent fuel pools will be reached. A delay in the availability of this additional storage capacity may cause a reduction in power operation, or could necessitate the shutdown of Units 1 and 2. By providing additional capacity for temporary spent fuel storage with the proposed ISFSI, sufficient space can be maintained in each unit's spent fuel pool to fully offload its reactor core, if necessary, enabling the applicant to continue to operate both units until the current operating licenses expire (September 2021 for Unit 1 and April 2025 for Unit 2).

Environmental Impacts of the Proposed Action: The NRC staff has concluded that the construction, operation, and decommissioning of the Diablo Canyon ISFSI will not result in a significant impact to the environment. Construction impacts of the ISFSI will be minor, and limited to the small area of the ISFSI site and the excavated material disposal sites. The site chosen for the ISFSI, on approximately 5 acres of the 760 acre DCPP site, has been previously disturbed during plant construction, as have the disposal sites for the excavated material. The proposed ISFSI site and the disposal areas have been extensively surveyed and no federal or state listed threatened or endangered species have been found in those areas. Thus, the staff does not expect the proposed ISFSI to impact any threatened or endangered species. There will be minor impacts of increased noise and dust from construction equipment and activities during the construction phase, but this phase will be of short duration and will not impact offsite populations. The proposed ISFSI site is near a site which is included in the National Register of Historic Places, CA-SLO-2, but construction of the

ISFSI will not cause any adverse impacts to that site, due to the natural features and to the administrative controls employed by the applicant.

There will be no significant radiological or non-radiological environmental impacts from routine operation of the ISFSI. The ISFSI is a passive facility and no liquid or gaseous effluents will be released from the storage casks. The dose rates from the spent fuel will be limited by the design of the storage cask concrete overpacks. The total occupational dose to workers at the DCPP site may increase slightly due to work associated with loading, transferring, and storing the casks, but all occupational doses must be maintained below the limits specified in 10 CFR Part 20. The annual dose to the nearest resident from ISFSI activities is estimated to be 0.40 mrem/year, which is significantly below the annual dose limits specified in 10 CFR 72.104 and 10 CFR 20.1301(a) (25 mrem and 100 mrem, respectively). The cumulative dose to an individual offsite from all site activities will be 0.45 mrem/year, which is also much less than the limits specified in 10 CFR 72.104 and 10 CFR 20.1301. These doses are also a small fraction of the doses resulting from naturally-occurring terrestrial and cosmic radiation of about 100 mrem/yr in the vicinity of the DCPP.

Additionally, occupational doses received by facility workers will not exceed the limits specified in 10 CFR 20.1201. For hypothetical accidents, the calculated dose to an individual at the nearest site boundary is well below the 5 rem limit for accidents set forth in 10 CFR 72.106(b) and in the U.S. Environmental Protection Agency's protective action guidelines.

The impacts from decommissioning the ISFSI will be much less than the minor impacts of construction and operation. Very small occupational exposures could occur during decontamination activities, if they are necessary, and minor noise and dust impacts could result from dismantling the pad and structures.

Alternatives to the Proposed Action: The applicant's Environmental Report and the staff's EA discussed several alternatives to the proposed ISFSI. These alternatives included shipment of spent fuel off site, and other methods to increase onsite spent fuel storage capacity, as well as the no action alternative. In the first category, the alternatives of shipping spent fuel from Diablo Canyon to a permanent Federal Repository, to a reprocessing facility, or to a privately owned spent fuel storage facility were determined to be non-viable alternatives, as no such facilities

are currently available in the United States, and shipping the spent fuel overseas is impractical in light of the political, legal, and logistical uncertainties and the high cost. Shipping the DCPSP spent fuel to another nuclear power plant was also determined to be a non-viable alternative, because the receiving utility would have to be licensed to store the DCPSP spent fuel, and it is unlikely that another utility would be willing to accept it, in light of their own limitations on spent fuel storage capacity.

Other onsite storage alternatives considered by the applicant included increasing the capacity of the existing spent fuel pools by re-racking or spent fuel rod consolidation, or construction of a new spent fuel storage pool. The applicant has previously amended the DCPSP licenses to permit re-racking, and although further re-racking is possible, it could require extensive modifications to the spent fuel pools and supporting systems, and would not accommodate all of the spent fuel to be generated for the duration of the plant's current operating licenses. Spent fuel rod consolidation is also possible, but would require replacement of the existing storage racks to support the greater weight of the consolidated assemblies, and would require extensive operational resources to reconfigure all the fuel assemblies currently in storage. This alternative was also considered impractical, due to the high cost and the significant occupational exposure to be incurred. Similarly, although the applicant could construct an additional spent fuel pool, the high cost associated with constructing and maintaining such a facility and all of the necessary support equipment, coupled with the significant occupational exposures resulting from the extensive fuel handling operations, make this alternative impractical.

The no action alternative could result in the extended or permanent shutdown of both DCPSP units many years before the expiration of their current operating licenses, once the current capacity of the units' spent fuel pools is reached. The electrical generation capacity lost would likely be replaced by fossil-fueled plants, which could result in greater environmental impacts and higher costs for electricity. In the short-term, the shutdown of the DCPSP would have a negative impact on the local economy and infrastructure. For these reasons, the no action alternative is not considered a practical alternative.

As discussed in the EA, the Commission has concluded there are no significant environmental impacts

associated with the proposed Diablo Canyon ISFSI, and other alternatives were not pursued because of significantly higher costs, additional occupational exposures, and the unavailability of offsite storage options.

Agencies and Persons Contacted: Officials from the California Energy Commission (CEC), the California Office of Historic Preservation and the U.S. Fish and Wildlife Service were contacted in preparing the staff's environmental assessment. The CEC provided comments by letter dated August 12, 2003; these comments have been addressed in the EA.

Finding of No Significant Impact

The staff has reviewed the environmental impacts of the proposed ISFSI relative to the requirements set forth in 10 CFR Part 51, and has prepared an Environmental Assessment. Based on the EA, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that issuance of a license for the interim storage of spent nuclear fuel at the Diablo Canyon ISFSI will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31 and 51.32, a finding of no significant impact is appropriate and an environmental impact statement need not be prepared for the issuance of a materials license for the Diablo Canyon ISFSI.

Further details related to this proposed action are provided in the license application, dated December 21, 2001, as amended October 15, 2002, and the staff's EA, dated October 24, 2003. These documents and others related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland, or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC web site at: <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail at pdr@nrc.gov.

Dated at Rockville, Maryland, this 24th day of October, 2003.

For the U.S. Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03-27328 Filed 10-29-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised Meeting Notice

The agenda for the 507th ACRS meeting, scheduled to be held on November 5-8, 2003, has been reorganized as noted below to facilitate effective use of the Committee's time. Notice of this meeting was previously published in the **FEDERAL REGISTER** on Friday, October 24, 2003 (68 FR 61020).

Wednesday, November 5, 2003

- Closed discussion of safeguards and security matters, scheduled to be held between 10:15 a.m. and 7 p.m., is now scheduled between 12:30 p.m. and 7 p.m. on the same day.

- Discussion of the Draft Final Regulatory Guide 1.32, Revision 3, "Criteria for Power Systems for Nuclear Plants," scheduled to be held between 10:45 a.m.-11:45 a.m. on *Thursday, November 6, 2003*, is now scheduled between 10:35 a.m. and 11:30 a.m., on *Wednesday, November 5, 2003*.

Thursday, November 6, 2003

- Discussion of the Regulatory Effectiveness of the Resolution of Unresolved Safety Issue (USI)-A45, scheduled to be held between 10:15 a.m. and 12 Noon, on *Friday, November 7, 2003*, is now scheduled between 10:45 a.m. and 11:45 a.m., on *Thursday, November 6, 2003*.

Friday, November 7, 2003

- Discussion of the Task Force report on Operating Experience, scheduled to be held between 3 p.m.-4 p.m. on *Friday, November 7, 2003*, is now scheduled between 10:15 a.m. and 11:15 a.m. on the same day.

All other items pertaining to this meeting essentially remain the same as previously published in the **Federal Register** on Friday, October 24, 2003 (68 FR 61020).

For further information, contact: Dr. Sher Bahadur, Associate Director for Technical Support, ACRS, (Telephone: 301-415-0138), between 7:30 a.m. and 4:15 p.m., ET.

Dated: October 24, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03-27333 Filed 10-29-03; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Capital Pacific Holdings, Inc., \$.10 par value) File No. 1-09911

October 24, 2003.

Capital Pacific Holdings, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its Common Stock, \$.10 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer approved a resolution on September 23, 2003 to withdraw the Issuer's Security from listing on the Amex. The Board states that it considered the following reasons in its decision to withdraw the Security from listing and registration on the Amex: the additional financial burden of complying with the Sarbanes-Oxley Act and related regulations, listing standards and accounting pronouncements. In particular, the Board was informed by management that the additional financial burden of complying with the Sarbanes-Oxley Act and related regulations, listing standards and accounting pronouncements exceeds an average of approximately \$300,000 per annum. In addition, the Board concluded that the Issuer or its shareholders do not benefit materially from listing the Issuer's Security on the Exchange for various reasons, including the small public float, lack of analyst coverage and low trading volume. The Issuer states that it is seeking to identify a market marker to

facilitate trading in the Security notwithstanding the deregistration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act³ and shall not affect its obligation to be registered under Section 12(g) of the Act.⁴

Any interested person may, on or before November 14, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,

Secretary.

[FR Doc. 03-27341 Filed 10-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Hastings Manufacturing Company, Common Stock, \$2.00 Par Value) File No. 1-03574

October 23, 2003.

Hastings Manufacturing Company, a Michigan corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its Common Stock, \$2.00 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of

Michigan, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer states that it is taking such action for the following reasons: ongoing legal fees and expenses, stock exchange fees; the costs of investor relations, press releases and annual reports; director and officer liability insurance premiums attributable to the Company's public status; additional costs and related management time and attention associated with the Company's public status; and compliance with the Sarbanes-Oxley Act and related rulemaking represent a substantial monetary burden to the Company.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act³ shall not affect its obligation to be registered under Section 12(g) of the Act.⁴

Any interested person may, on or before November 14, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,

Secretary.

[FR Doc. 03-27340 Filed 10-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-07516]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Keane, Inc., Common Stock, \$.10 Par Value)

October 24, 2003.

Keane, Inc., a Massachusetts corporation ("Issuer"), has filed an application with the Securities and

³ 15 U.S.C. 78l(b).

⁴ 15 U.S.C. 78l(g).

⁵ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d2-2(d).

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 78l(b).

⁴ 15 U.S.C. 78l(g).

⁵ 17 CFR 200.30-3(a)(1).

Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its Common Stock, \$.10 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on September 4, 2003 to withdraw its Security from listing and registration on the Amex and to list its Security on the New York Stock Exchange, Inc. ("NYSE"). The Board states that it took such action in order to avoid the direct and indirect costs and the division of the market resulting from dual listing on the Amex and the NYSE.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Massachusetts, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act³ and shall not affect its obligation to be registered under Section 12(g) of the Act.⁴

Any interested person may, on or before November 14, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,
Secretary.

[FR Doc. 03-27336 Filed 10-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Rampart Capital Corporation, Common Stock, \$.01 par value) File No. 1-15277

October 24, 2003.

Rampart Capital Corporation, a Texas corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its Common Stock, \$.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Texas, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer states that it is taking such action for the following reasons: the Issuer intends to amend its articles of incorporation to effect a 1-for-100,000 reverse stock split of its Security and cash-out fractional shares at \$3.50 per pre-split share. A meeting of the Issuer's shareholders will be held on November 5, 2003 to vote on the amendment to its articles of incorporation. Shareholders holding sufficient shares to approve the amendment have already indicated that they intend to vote in favor of the amendment. When approved, the amendment will be filed with the Secretary of State of Texas and be effective at 12:01 a.m. on November 6, 2003. As a result of the reverse split and subsequent cashing-out of fractional shares, the Issuer will only have two record and beneficial shareholders, who are directors and officers of the Issuer.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act³ shall not affect its obligation to be registered under section 12(g) of the Act.⁴

Any interested person may, on or before November 14, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth

Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,
Secretary.

[FR Doc. 03-27342 Filed 10-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Totta & Acores Financing, Ltd. To Withdraw Its 8.875% Non-Cumulative Guaranteed Preference Shares, Series A, \$25.00 par value, From Listing and Registration on the New York Stock Exchange, Inc. File No. 1-14520

October 24, 2003.

Totta & Acores Financial, Ltd., a Cayman Islands corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its 8.875% Non-Cumulative Guaranteed Preference Shares, Series A, \$25.00 par value, ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Issuer stated in its application that it has complied with all applicable laws in effect in the jurisdiction of Cayman Islands, in which it is incorporated, and with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer stated in its application that it has met the requirements of the NYSE rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer approved a resolution on May 13, 2003 to withdraw the Issuer's Security from listing on the NYSE. The

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 78l(b).

⁴ 15 U.S.C. 78l(g).

⁵ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 78l(b).

⁴ 15 U.S.C. 78l(g).

⁵ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d2-2(d).

Board stated that following reasons factored into its decision to withdraw the Issuer's Security from the Exchange: the limited trading volume; the direct and indirect administrative costs involved with continued NYSE listing and the compliance with its new listing requirements; the continuing and ever increasing administrative cost and expenses associated with the preparation and filing of the reports required by the Commission. The Issuer stated that Security commenced trading on the Cayman Island Stock Exchange on September 2, 2003.

The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act³ and shall not affect its obligation to be registered under section 12(g) of the Act.⁴

Any interested person may, on or before November 14, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,

Secretary.

[FR Doc. 03-27343 Filed 10-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 61025, October 24, 2003.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional Meeting.

A Closed Meeting will be held on Monday, October 27, 2003 at 4:45 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the

Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7) and (10) and 17 CFR 200.402(a)(3), (5), (7) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Atkins, as duty officer, voted to consider the item listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting to be held on Monday, October 27, 2003 was:

Institution and settlement of administrative proceeding of an enforcement nature; and

Institution of an injunctive action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942-7070.

Dated: October 27, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03-27435 Filed 10-28-03; 11:02 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48687]

Order Canceling Registrations of Certain Transfer Agents

October 23, 2003.

On May 22, 2003, notice was published in the **Federal Register** that the Securities and Exchange Commission (Commission) intended to issue an order, pursuant to section 17A(c)(4)(B) of the Securities Exchange Act of 1934 (Exchange Act),¹ canceling the registrations of the transfer agents whose names appear in the attached Appendix.² For the reasons discussed below, the Commission is canceling the registration of each of the transfer agents identified in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Catherine Moore, Special Counsel, at

202/942-4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001.

Background and Discussion

Section 17A(c)(4)(B) of the Exchange Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall by order cancel that transfer agent's registration. On May 15, 2003, the Commission issued Notice of Intention to Cancel Registrations of Certain Transfer Agents (Notice) that identified 14 transfer agents that the Commission believed were no longer in existence or had ceased doing business as transfer agents. The Notice stated that at any time after June 23, 2003, which was 30 days after the Notice was published in the **Federal Register**, the Commission intended to issue an order canceling the registrations of any or all of the identified transfer agents. One of the identified transfer agents submitted a Form TA-W, Notice of Withdrawal from Registration as a Transfer Agent. None of the remaining 13 identified transfer agents have contacted the Commission to object to the cancellation of their registrations.

Accordingly, the Commission is canceling the registration of each of the 13 transfer agents identified on the Appendix to the Order.

Order

On the basis of the foregoing, the Commission finds that each of the transfer agents whose name appears on the attached Appendix either is no longer in existence or has ceased doing business as a transfer agent.

It is therefore ordered, pursuant to Section 17A(c)(4)(B) of the Exchange Act, that the registration as a transfer agent of each of the transfer agents whose name appears in the attached Appendix be and hereby is canceled.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³

Margaret H. McFarland,

Deputy Secretary.

Appendix

Registration Number/Name

(84-5920)—The Axess Media Group, LTD
(84-5826)—Corey L. Lewis
(84-5847)—Financial Strategies, LLC
(84-5756)—IDM Corporation
(84-5727)—Impact Administrative Services, Inc.
(84-1208)—MLH Depository Inc.

³ 15 U.S.C. 78j(b).

⁴ 15 U.S.C. 78j(g).

⁵ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78q-1(c)(4)(B).

² Securities Exchange Act Release No. 47878 (May 15, 2003), 68 FR 28038 (May 22, 2003).

³ 17 CFR 200.30-3(a)(22).

(84-5875)—NAVCAP Securities Inc.
 (84-5647)—Penn Street Advisors, Inc.
 (84-5834)—Reserve General Escrow
 Company
 (84-682)—Swiss Chalet, Inc.
 (84-191)—Texaco Inc.
 (84-986)—The Troy Investment Fund
 (84-1947)—Vermont Fund Advisors, Inc.

[FR Doc. 03-27309 Filed 10-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48680; File No. SR-CHX-2003-30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Interpretation by the Chicago Stock Exchange, Incorporated Relating to Execution of Limit Orders for OTC Securities

October 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 6, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule interpretation 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 Exchange is submitting an interpretation of existing CHX Article XX, Rule 37(a)(3), which provides for execution of resting CHX customer limit orders for Nasdaq/NM ("OTC") securities, when the quotation of a Designated Market (as defined below) locks or crosses the limit price.

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 interpretation and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The 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 for, the Proposed Rule Change

1. Purpose

The Exchange is proposing an interpretation of existing CHX Article XX, Rule 37(a)(3), which provides for execution of resting CHX customer limit orders for OTC securities, when the quotation of a Designated Market locks or crosses the limit price.

In June of 2003, the Commission noticed a proposal submitted for immediate effectiveness, which amended CHX Article XX, Rule 37(a)(3), to add a provision that would permit a CHX specialist to enable a functionality that would automatically execute designated limit orders for OTC securities when the quotation of a Designated Market locked or crossed the limit price.³ The rule change defined "Designated Market" as "the market center designated by the CHX specialist, and approved by the Exchange."

The rule change was intended by the Exchange to provide OTC specialists with a long-standing functionality available to limit orders for listed securities; such limit orders generally are entitled to a fill at the limit price if a price penetration (*i.e.*, trade-through) or certain other conditions occur in the primary market. Because there is no primary market for OTC securities, however, the CHX proposed a rule change that would permit designation of particular OTC market center(s) as the basis for the CHX specialist's limit order protection.

As set forth in submission SR-CHX-2003-05, initially, all CHX specialists designated the NASDAQ Stock Market as the "Designated Market" for purposes of amended CHX Article XX, Rule 37(a)(3). After initial implementation of the OTC limit order protection functionality, the Exchange's OTC specialist community has elected to designate additional OTC markets as Designated Markets. Specifically, the Exchange's OTC specialists wish to expand their designation to include all current UTP Plan Participants⁴ and the

³ See Securities Exchange Act Release No. 48014 (June 11, 2003), 68 FR 35923 (June 17, 2003) (File No. SR-CHX-2003-05).

⁴ The "Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis" (the "UTP Plan") defines its Participants to include the American Stock Exchange, Boston Stock Exchange, Chicago Stock Exchange, Cincinnati

Alternative Display Facility operated by the National Association of Securities Dealers. These OTC markets would be considered Designated Markets, along with the NASDAQ Stock Market. The Exchange believes that identification of additional OTC markets as "Designated Markets" is appropriate, because it will result in the automatic execution of more limit orders on the CHX, to the benefit of the investing public.

In the Notice of Filing and Immediate Effectiveness for SR-CHX-2003-05,⁵ the CHX represented that if all CHX specialists made a different or additional designation for all securities traded on the Exchange, the Exchange would file those changes with the Commission. The Exchange submitted this rule interpretation in accordance with that representation.⁶

2. Statutory Basis

The CHX believes the proposal 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).⁷ The CHX believes the proposal is consistent with Section 6(b)(5) of the Act⁸ in that 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 a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule interpretation will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

Stock Exchange, National Association of Securities Dealers, Pacific Exchange and Philadelphia Stock Exchange. Not all of these Participants currently trade OTC securities or disseminate quotations for OTC securities. To the extent that they commence trading OTC securities in the future, the CHX plans to include such market centers as Designated Markets.

⁵ See note 3, *supra*.

⁶ Telephone conversation between Kate Boege, Associate General Counsel, CHX, and Katherine A. England, Assistant Director, Division of Market Regulation, Commission, on October 21, 2003.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(1) thereunder¹⁰ because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule interpretation, the Commission may summarily abrogate such rule interpretation if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule interpretation that are filed with the Commission, and all written communications relating to the proposed rule interpretation 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-2003-30 and should be submitted by November 20, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-27344 Filed 10-29-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48689; File No. SR-FICC-2003-03]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Criteria Used To Place Members on Surveillance Status

October 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 20, 2003, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on June 3 and 18, 2003, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to amend the criteria it uses to place members on surveillance status.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the current rules of both the Government Securities Division ("GSD") and the Mortgage-Backed Securities Division ("MBSD") of FICC, management has the ability to place a member in a surveillance status class depending on whether the member satisfies one or more of the enumerated financial and operational criteria in the specific class. Once placed on surveillance status, FICC closely

monitors the member's condition. The current criteria for placing members on surveillance status are broadly written and capture many FICC members that pose minimal financial or operational risk to FICC. This creates administrative burdens for FICC staff who must more closely monitor these members that pose minimal risk.

To remedy this problem, FICC has developed new criteria for placing members on surveillance. Specifically, all domestic broker-dealers and banks³ that are GSD netting members and/or MBSD clearing members will be assigned a rating that is generated by entering financial data of the member into a matrix ("Matrix") developed by credit risk staff.⁴ Those members with a "weak" rating or deemed to pose a relatively higher degree of risk to FICC will be placed on an internal "watch list" and monitored more closely by credit risk staff.⁵ The consequences of being put on the "watch list" will be the same as is currently the case with surveillance status in the GSD's rules and include possibly requiring the member on "watch list" status to submit additional financial reports and data and/or make additional clearing or participants fund deposits.⁶

All other categories of netting and clearing members, including non-US netting members and comparison-only members, will not be included in the Matrix process because these members possess characteristics that prohibit the Matrix from effectively evaluating their risk to FICC. However, these members will be monitored by credit risk staff using financial criteria deemed relevant

³ The following categories of GSD members will receive ratings: Category 1 and 2 Dealer Netting Members, Category 1 and 2 Inter-Dealer Broker Netting Members, and Bank Netting Members. In the MBSD, Comparison and Clearing System Participants that are either banks or broker-dealers will be rated. Domestic broker-dealers and domestic banks are the only member types to which the Matrix will be applicable because (i) they represent the majority of the members of FICC and (ii) their financial reports contain information that lends them to the Matrix approach.

⁴ FICC's approach to the analysis of members will be based on a thorough quantitative analysis. A broker-dealer member's rating on the Matrix will be based on factors including size (*i.e.*, total excess net capital), capital, leverage, liquidity, and profitability. Banks will be reviewed based on size, capital, asset quality, earnings, and liquidity.

⁵ Members will also be evaluated based on their compliance with certain "parameter breaks" which will be determined based on applicable monthly and/or quarterly exception reports generated by credit risk staff. A member may be placed on the "watch list" for failure to fall within, for example, prescribed excess net capital, excess liquid capital, aggregate indebtedness, leverage ratio, or financial membership requirement parameters.

⁶ The MBSD's rules do not currently provide for surveillance status, but the MBSD has the right under certain circumstances to require additional financial reports and increased participants fund.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(1).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by FICC.

by FICC.⁷ Based on this monitoring, such Members may also be placed on the "watch list" if they experience a financial change that presents risk to FICC. Some examples include failure to meet minimum financial requirements or experiencing a significant decrease in equity (for GSD members) or net asset value (for MBSD members). Members placed on the "watch list" in this way will also be monitored more closely by credit risk staff.

The GSD will continue, in accordance with its current procedures, to place GSD netting members on the "watch list" for failure to comply with operational standards and requirements.⁸ MBSD expects to implement a similar provision, as outlined in these rule changes, by the fourth quarter of 2003.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁹ and the rules and regulations thereunder applicable to FICC because it will facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible and in general will protect investors and the public interest by improving FICC's member surveillance process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

⁷ Credit risk staff will monitor these members by reviewing similar criteria as those reviewed for members included on the Matrix. FICC will file a proposed rule change should it decide to use a more applicable Matrix process to evaluate these members.

⁸ The GSD currently monitors the comparison rates of members. Currently, low comparison rates can result in a member being placed on Class 1 surveillance status. Under the proposed rule change, low comparison rates may result in a GSD member being placed on the "watch list." Both the GSD and the MBSD may monitor for other operational factors in the future such as failing to timely submit trade data on a frequent basis.

⁹ 15 U.S.C. 78q-1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-FICC-2003-03. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC.

All submissions should refer to File No. SR-FICC-2003-03 and should be submitted by November 20, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-27308 Filed 10-29-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48688; File No. SR-Phlx-2003-70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Payment for Order Flow Fees for the Top 120 Options

October 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 10, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which the Phlx has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to establish its equity options payment for order flow fees imposed on the transactions of Phlx Registered Options Traders ("ROTs") for the period from November 2003 through January 2004 for the top 120 equity options based on volume statistics from July, August and September 2003,³ as

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange's payment for order flow fee is imposed on transactions in the top 120 most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation. The measuring period for the top 120 equity options encompasses three months and the Exchange files a separate proposed rule change for each three-month trading period. With respect to the payment for order flow fees imposed on trades settling on or after August 1, 2003 through October 31, 2003, for example, the measuring period for the top 120 equity options was based on volume statistics from April, May and June 2003. See Securities Exchange Act Release No. 48205 (July 22, 2003), 68 FR 44557 (July 29, 2003) (SR-Phlx-2003-50). For the payment for order flow fees imposed on trades settling on or after November 1, 2003 through January 31, 2004, as set forth in this proposal, the measuring period for the top 120

Continued

set forth on the ROT Equity Option Payment for Order Flow Charges Schedule⁴ and subject to certain exceptions listed below. The Phlx intends to implement the payment for order flow fees for trades settling on or after November 1, 2003 through January 31, 2004. The rate levels would not change: the top-ranked equity option would be charged a fee of \$1.00 per contract; the next 49 equity options would be charged a fee of \$.40 per contract; and no fee would be imposed for the remaining equity options in the top 120.⁵ The Exchange's ROT Equity Option Payment for Order Flow Charges Schedule is available at the Phlx 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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx 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

The Phlx has reinstated its payment for order flow program.⁶ Under the program, the Phlx charges ROTs a per-contract fee with respect to their

equity options is based on volume statistics from July, August, and September 2003.

⁴ To avoid confusion, the ROT Equity Option Payment for Order Flow Charges Schedule reflects only those options being charged more than \$0.00.

⁵ Under the Exchange's payment for order flow program, a 500 contract cap per individual cleared side of a transaction is imposed. Thus, the applicable payment for order flow fee would be imposed only on the first 500 contracts per individual cleared side of a transaction. For example, if a transaction consists of 750 contracts by one ROT, the applicable payment for order flow fee would be applied to, and capped at, 500 contracts for that transaction. Also, if a transaction consists of 600 contracts, but is divided equally among three ROTs, the 500 contract cap would not apply to any such ROT and each ROT would be assessed the applicable payment for order flow fee on 200 contracts, as the payment for order flow fee is assessed on a per ROT, per transaction basis. See Securities Exchange Act Release No. 47958 (May 30, 2003), 68 FR 34026 (June 6, 2003) (proposing SR-Phlx-2002-87) and Securities Exchange Act Release No. 48166 (July 11, 2003), 68 FR 42540 (July 17, 2003) (approving SR-Phlx-2002-87).

⁶ See Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR-Phlx-2002-75).

transactions in the top 120 most actively traded equity options issues, subject to certain exceptions.⁷ The fees are set forth on the Phlx's ROT Equity Option Payment for Order Flow Charges Schedule.

1. Purpose

The purpose of the proposed rule change is to establish the payment for order flow fees for the top 120 equity options for trades settling on or after November 1, 2003 through January 31, 2004. The Phlx will file with the Commission a proposed rule change to address changes to the fee schedule for subsequent time periods. The Phlx is not making any other changes to its payment for order flow program at this time.

2. Statutory Basis

The Exchange believes that this proposal to amend its schedule of dues, fees and charges would be an equitable allocation of reasonable fees among Phlx members, and that the proposal is consistent with Section 6(b) of the Act⁸ and furthers the objectives of Section 6(b)(4) of the Act.⁹

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

The Phlx neither solicited nor received written comments on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder. Accordingly, the proposal has taken effect upon filing with the Commission. At any time within 60

⁷ The payment for order flow fee does not apply to specialist transactions or to transactions between: (1) A ROT and a specialist; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. According to the Phlx, the fee is not imposed with respect to the above-specified transactions because the primary focus of the program is to attract order flow from customers. The payment for order flow fee also does not apply to index or foreign currency options.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2003-70 and should be submitted by November 20, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-27345 Filed 10-29-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48692; File No. SR-SCCP-2003-04]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of a Proposed Rule Change Relating to Permanent Approval of SCCC's Restructured Limited Clearing Business

October 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 20, 2003, the Stock Clearing Corporation of Philadelphia ("SCCP")

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which items have been prepared primarily by SCCP. 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

In the proposed rule change, SCCP seeks to obtain permanent approval of SCCP's restructured business whereby it provides limited clearance and settlement services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP 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. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to obtain permanent approval of SCCP's restructured and limited clearance and settlement business. In connection with the withdrawal by the Philadelphia Stock Exchange, Inc. ("Phlx") from the securities depository business (offered by its wholly owned subsidiary the Philadelphia Depository Trust Company ("Philadep")) and its restructuring and limiting its clearance and settlement business (offered by its wholly owned subsidiary SCCP), Phlx, SCCP, Philadep, National Securities Clearing Corporation ("NSCC"), and The Depository Trust Company ("DTC"), entered into an agreement dated as of June 18, 1997 ("Agreement"). Under the Agreement, the parties worked together to assure the orderly transition of most of the day-to-day depository and clearance services of the Philadep and SCCP to DTC and NSCC. Pursuant to the Agreement, SCCP ceased operating its continuous net settlement ("CNS") system for conducting settlements between SCCP

and its participants. As a result, SCCP ceased providing the cash settlement services attendant to Philadep's same-day funds settlement system and the Philadep settlement process. However, pursuant to the Agreement, SCCP continued to offer limited clearing and settlement services to PHLX members.

In December 1997, the Commission approved proposed rule changes which gave effect to the Agreement, which reflected Philadep's withdrawal from the depository business, and which temporarily approved SCCP's restructured and limited clearance and settlement business.³ Subsequently, the Commission has extended the temporary approval several times so that SCCP could continue to offer restructured and limited clearance and settlement services.⁴

SCCP is hereby proposing that the Commission grant permanent approval to its providing these limited clearance and settlement services. SCCP believes that its restructured operations have functioned consistent with its original proposed rule change. More specifically, SCCP believes its operations are functioning well under actual working conditions.

In the original rule filing approving SCCP's restructured business, many SCCP rules were amended and discussed at length. No new rule changes are proposed at this time. Thus, the purpose of the proposed rule change is to acquire permanent approval of SCCP's restructured and limited clearing and settlement services, as discussed in more detail below.

Under its proposal, SCCP will continue to offer trade confirmation and recording services to Phlx members effecting transactions through regional

interface operations ("RIO") accounts and ex-clearing accounts. SCCP will not provide clearing guarantees for these transactions.

SCCP will continue to provide margin accounts for margin members that clear and settle their transactions through SCCP's Omnibus Clearance and Settlement Account at NSCC.⁵ SCCP will continue to have the right to demand at any time that a margin member provide additional margin based upon SCCP's review of the margin member's security positions held in its margin account at SCCP. SCCP will retain the margin thresholds specified in its Procedures and will continue to have the right to require adequate assurances or additional margin in addition to the minimum margin thresholds in order to protect SCCP in issues deemed by SCCP to warrant additional protection. SCCP may also continue to demand any such margin payments in federal funds in accordance with its Procedures.

SCCP will continue to issue margin calls to any margin member when the margin requirement exceeds the "account equity," as defined in SCCP's Rules. SCCP may waive any amount that would trigger a margin call not exceeding \$500. Any failure to meet a margin call will subject such delinquent margin member to SCCP's rules governing disciplinary proceedings and penalties as well as to the late penalties specified in SCCP rules. SCCP can cease to act for such delinquent margin members and can retain a lien on all such margin members' accounts and securities therein.

SCCP will continue to maintain records on each individual margin account. SCCP will continue to maintain the Omnibus Clearance and Settlement Account at NSCC to reflect all positions in SCCP's margin accounts. SCCP will continue to guarantee the settlement obligations of the Omnibus Clearance and Settlement Account to NSCC. In turn, pursuant to the Agreement, Phlx would continue to guarantee SCCP's obligations to NSCC.

SCCP's books and records for the Omnibus Clearance and Settlement Account will continue to reflect all activity that occurs in such account at NSCC. At any time prior to midnight Philadelphia time on the next business day after SCCP receives a margin

³ Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703 (December 19, 1997) (SR-DTC-97-16, SR-NSCC-97-08, SR-Philadep-97-04, SR-SCCP-97-04). At that time, the Commission stated that, "However, because a part of SCCP's proposed rule change concerns the restructuring of SCCP's operations to enable SCCP to offer limited clearing and settlement services to certain Phlx members, the Commission finds that it is appropriate to grant only temporary approval to the portion of SCCP's proposed rule change that amends SCCP's By-Laws, Rules, or Procedures. This will allow the Commission and SCCP to see how well SCCP's restructured operations are functioning under actual working conditions and to determine whether any adjustments are necessary. Thus, the Commission is approving the portion of SCCP's proposal that amends its By-Laws, Rules and Procedures through December 31, 1998."

⁴ Securities Exchange Act Release Nos. 40872 (December 31, 1998), 64 FR 1264 (January 8, 1999) (SR-SCCP-98-05); 42320 (January 6, 2000), 65 FR 2218 (January 13, 2000) (SR-SCCP-99-04); 43781 (December 28, 2000), 66 FR 1167 (January 5, 2001) (SR-SCCP-00-05); 45227 (January 3, 2002), 67 FR 1259 (January 9, 2002) (SR-SCCP-2001-11); and 47016 (December 17, 2000), 67 FR 78556 (December 24, 2002) (SR-SCCP-2001-12).

⁵ SCCP will continue to offer margin services only to: (1) PHLX equity specialists for their specialists and alternative specialists transactions, as well as for their propriety transactions in securities for which they are appointed as specialists or alternative specialists and (2) PHLX members listed on a schedule that are not PHLX equity specialists for their propriety transactions. Under the Agreement, SCCP may add other PHLX members to the schedule subject to NSCC's approval.

² The Commission has modified parts of these statements.

member's trade, SCCP will continue to be entitled to reverse the trade from the member's account. SCCP would continue to settle the Omnibus Clearance and Settlement Account with NSCC each business day in accordance with NSCC's Rules and Procedures. Accordingly, SCCP would continue to be subject to NSCC's Rules.

Through the Omnibus Clearance and Settlement Account, SCCP will continue to have one composite settlement per day with NSCC. SCCP will maintain line of credit ("LOC") arrangements with one or more commercial banks sufficient to support anticipated funding needs of the underlying margin accounts.

To ensure that margin members have an efficient way to obtain securities depository services after the closure of Philadep's depository service, SCCP opened a NSCC-sponsored depository account at DTC. In the event that margin members effect trades in securities not eligible for custodial services in DTC's book-entry system, SCCP would continue to utilize the Direct Clearing Service to settle these transactions. SCCP would continue to perform bookkeeping and reconciliation services for the Omnibus Clearance and Settlement Account and its related DTC custody account pursuant to SCCP Procedures.

Clearly SCCP, as a NSCC clearing member and NSCC sponsored participant of DTC, will continue to be required to provide NSCC with clearing fund contributions.

SCCP will continue to apply a fixed \$35,000 contribution for the specialist margin account and non-specialist margin account categories and a contribution of \$10,000 to \$75,000 for RIO accounts, depending upon monthly trading activity. Participants engaging in more than one account type activity will continue to be subject only to the formula that would generate the highest contribution.

SCCP believes permanent approval of SCCP's restructured and limited clearance and settlement services is consistent with the requirements of the Act and the rules and regulations thereunder and in particular with Section 17A(b)(3)(F) which requires that a clearing agency be organized and its rules be designed, among other things, to promote the prompt and accurate clearance and settlement of securities transactions, to safeguard funds and securities in its possession and control, and to remove impediments to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. SCCP believes that permanent approval

of SCCP's restructured business should promote the prompt and accurate clearance and settlement of securities transactions by integrating and consolidating clearing services available to the industry; further, it should assure the safeguarding of securities and funds in the custody or control of SCCP or for which SCCP is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 SCCP 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-SCCP-2003-04. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-27346 Filed 10-29-03; 8:45 am]

BILLING CODE 8010-01-P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202-395-6974.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401

⁶ 17 CFR 200.30-3(a)(12).

Security Blvd., Baltimore, MD 21235,
Fax: 410-965-6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-0454 or by writing to the address listed above.

1. *Statement of Household Expenses and Contributions—20 CFR 416.1130-.1148-0960-0456.* Eligibility for Supplemental Security Income (SSI) is based on need. A factor for determining need is whether an individual receives in-kind support and maintenance in the form of food and shelter provided by other persons. SSA collects information on form SSA-8011-F3 to determine the existence and amount of in-kind support and maintenance received by a claimant/beneficiary of SSI. SSA uses the information to determine eligibility and payment amount under this program. The respondents are members of SSI claimants'/beneficiaries' households.

Type of Request: Revision of an OMB-approved Information Collection.

Number of Respondents: 400,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 100,000 hours.

2. *Blood Donor Locator Service—20 CFR 401.200-0960-0501.* Section 1141(a) of the Social Security Act and 42 U.S.C. 1320b-11 require that participating State agencies provide the SSA Blood Donor Locator Service (BDLS) with specific information on blood donors who have tested positive for Human Immunodeficiency Virus (HIV). SSA uses the information to identify the donor and to locate the donor's address in SSA records for the

purpose of notifying the states and assuring that states meet regulatory requirements to qualify for using the BDLS. SSA will retain no record of the request or the information after processing has been completed. The respondents are participating State agencies acting on behalf of authorized blood donor facilities.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 10.

Frequency of Response: 5.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 12.5 hours.

3. *Discrimination Complaint Form—0960-0585.* The information collected on form SSA-437 is used by SSA to investigate and informally resolve complaints of discrimination based on race, color, national origin, sex, age, religion, and retaliation in any program or activity conducted by SSA. A person who believes that he or she has been discriminated against on any of the above basis may file a written complaint of discrimination. The information will be used to identify the complainant; identify the alleged discriminatory act; ascertain the date of such alleged act; obtain the identity of the individual(s)/ facility/component that allegedly discriminated; and ascertain other relevant information that would assist in the investigation and resolution of the complaints. The respondents are individuals who allege discrimination on the grounds described above.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 98.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 98 hours.

4. *Benefits Planning, Assistance, and Outreach (BPAO) Program—0960-0629.*

Background

SSA awarded cooperative agreements to establish community-based benefits

planning, assistance, and outreach projects in every State and U.S. Territory, as authorized under section 1149 of the Social Security Act. Potential awardees were State and local governments, public and private organizations, and nonprofit and for-profit organizations. SSA intended to establish as many projects as needed to ensure State-wide coverage for all Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) beneficiaries nationally. The projects funded under this cooperative agreement program are part of SSA's strategy to increase the number of beneficiaries who return to work and achieve self-sufficiency as the result of delivering direct services to them. The overall goal of the program is to disseminate accurate information concerning work incentives programs and issues related to youth programs, to beneficiaries with disabilities (including transition-to-work aged youth), in order to enable them to make informed choices about work.

Collection Activities

The BPAO project collects identifying information from the project sites and benefits specialists. In addition, data are collected from the beneficiaries on background, employment, training, benefits, and work incentives. We use the information to manage the program, with particular emphasis on contract administration, budgeting, and training. In addition, SSA uses the information to evaluate the efficacy of the program and to ensure that those dollars appropriated for BPAO services are being spent on SSA beneficiaries. The project data will be valuable to SSA in its analysis of and future planning for the SSDI and SSI programs.

Type of Request: Extension of an OMB-approved Information Collection.

Title of collection	Number of annual responses	Frequency of response	Average burden per response (in minutes)	Estimated annual burden hours
Site	147	1	1.8	4.4
Specialist	422	1	1.8	12.6
Beneficiary	60,000	1	5.3	5,300

Total burden hours for this request: 5,317.

5. *Application for Supplemental Security Income—20 CFR 416.305-335-0960-0229.* The information collected using Form SSA-8000-BK or during a personal interview is needed and used

to determine eligibility for SSI and the amount of benefits payable. The respondents are applicants for SSI payments.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 1,128,374.

Frequency of Response: 1.

Average Burden Per Response: 40 minutes.

Estimated Annual Burden: 752,249 hours.

6. *Pre-1957 Military Service Federal Benefit Questionnaire—20 CFR*

404.1301–1371—0960–0120. Form SSA–2512 collects data used in the claims adjudication process to grant gratuitous military wage credits, when applicable, and solicits sufficient information to make a determination of eligibility. The respondents are individuals who are applying for Social Security benefits on the record of a wage earner with pre-1957 military service.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 2,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Application for Widow's or Widower's Insurance Benefits*—20 CFR 404.335–338—0960–0004. SSA uses the information collected on the form SSA–10–BK or during a personal interview to determine if the applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s benefits. The respondents are applicants for Widow(er)'s benefits.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 288,580.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 72,145 hours.

2. *Subpart T—State Supplementation Provisions*—20 CFR 416.2095–2099—0960–0240. Section 1618 of the Social Security Act contains pass along provisions of the Social Security Amendments. These provisions require States that supplement the Federal SSI benefits pass along Federal cost-of-living increases to the individuals who are eligible for State Supplementary benefit payments. If the State fails to keep payments at the required level, it becomes ineligible for Medicaid reimbursement under Title XIX of the Social Security Act. Social Security rules at 20 CFR 416.2099 require the States to report mandatory minimum and optional supplementary payment data to SSA. The information is used to determine compliance with the law and regulations. The respondents are States that supplement Federal SSI payments.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 16.

Number of Responses: 15 states report quarterly, 11 states report annually.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 71 hours.

3. *Request for Replacement SSA–1099/SSA–1042S Social Security Benefits Statement*—20 CFR 401.45—0960–0583. The information requested by SSA via the Internet will be used to verify identity and to provide replacement copies of Form SSA–1099/SSA–1042, which are needed to prepare Federal tax returns. This Internet option to request a replacement SSA–1099/SSA–1042 eliminates the need for a phone call to a teleservice center or a visit to a field office. The respondents are beneficiaries who request a replacement SSA–1099/1042 via the Internet.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 21,000.

Frequency of Response: 1.

Average Burden Per Response: 1.5 minutes.

Estimated Average Burden: 525 hours.

4. *Application of Circuit Court Law;* 20 CFR 404.985 and 416.1485—0960–0581. Social Security rules at 20 CFR 404.985 and 416.1485 inform claimants of their right to request that a published Acquiescence Ruling (AR) be applied to a prior determination when we make a determination or decision on a claim between the date of the Circuit Court decision and the date we publish the AR. The regulations also specify that claimants can request that the AR be applied to a prior determination or decision by submitting a statement that demonstrates how the AR could change the prior determination or decision. SSA will use the information provided in the statement to readjudicate the claim if the claimant demonstrates the Ruling could change the prior determination. Claimants may use Form SSA–795, Statement of Claimant or Other Person (0960–0045) or submit a written request, to request and support application of a published AR to the prior determination or decision. The respondents are claimants whose determinations or decisions on their claims may be affected by an AR.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 28,333 hours.

5. *Integrated Registration for Employers and Submitters (IRES)*—

0960–0626. The IRES authentication system is a free service designed to allow employers to access SSA's electronic wage reporting services, and to replace the use of a handwritten signature with an electronic signature. Employer representatives use an IRES-generated personal identification number (PIN) and password as their electronic signature. IRES is designed to be more efficient, reducing the costs to both employers and SSA, and will facilitate the filing of wage data electronically. SSA's paramount interest in the development of IRES was to ensure that the new electronic method of identifying wage report submitters provides the name security features as the current paper-based method. Security features include message integrity, originator authentication, non-repudiation and confidentiality. The PIN and password will be issued to an individual designated by the employer after SSA authenticates the company and contact information provided by the individual. SSA uses the IRES in conjunction with SSA's wage reporting processes. It is used as the gateway for electronic wage reporting and the online employee verification service. IRES will also be used when SSA implements additional electronic services such as electronic notices and error information, and to authenticate representatives of organizational representative payees in a limited Proof of Concept study. Also, the PIN will be used in the Annual Wage Reporting diskette process to replace IRS paper form 6559. SSA has received approval from IRS to use an alternative signature. Respondents to IRES will be Employers and Submitters who utilize SSA's electronic wage reporting and online employee verification services.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 250,120.

Number of Responses: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 8,337 hours.

6. *Request for Internet Services—Password*—0960–0632. SSA uses a PIN/password process for verifying the identity of individuals who choose to use the Internet and Automated Telephone Response in order to conduct business with the agency. An individual will be requested to provide certain information about himself or herself that SSA can verify in its records in order to obtain a password for use with its electronic services. The information that SSA collects varies depending on individual circumstances. Some examples of the information collected

are: name, social security number, password request code, benefit payment amount, and other shared secret types of information from SSA records. Once the requestor's identity is verified, SSA issues a PIN to the requestor which will allow them to establish a password for use with SSA Internet/telephone transactions. Until now, the services offered have been primarily to beneficiaries receiving benefits under title II of the Social Security Act, including Retirement, Survivors and Disability benefits. SSA now offers the opportunity for certain beneficiaries receiving benefits under title XVI of the Social Security Act, known as SSI, to report their wages electronically. SSA has initiated a 6-month Proof of Concept project to test the beneficiary acceptance of this technology for reporting wages. Participation in this Proof of Concept is voluntary. Individuals who must report wages include SSI beneficiaries, and, in some cases, the parent or spouse of the SSI beneficiary. In order to use SSA's electronic services, SSA must authenticate the person using its PIN/password process to protect the information in its records from those not authorized to receive it. This technology is expected to be more secure, less burdensome, faster and provide better customer service than other available options. The respondents are individuals who elect to conduct business with the agency in an electronic medium.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 412,267.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 68,711 hours.

7. *Student Reporting Form—20 CFR 404 Subpart B, and 20 CFR 422 Subparts D & E—0960-0088.* Form SSA-1383 is used by Social Security student beneficiaries to report events or changes that may affect continuing entitlement to these benefits. We are revising this form in order to solicit information about incarceration in compliance with current law. The respondents are Social Security student beneficiaries.

Type of Request: Revision of an OMB-approved Information Collection.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Annual Burden: 7,500 hours.

8. *Waiver of Right to Appear; 20 CFR 404.913-914, 20 CFR 404.916(b)(5); 20 CFR 416.1413-.1414 and 416(b)(5)—*

0960-0534. SSA uses Form SSA-773-U4 to provide claimants with an effective means of requesting a waiver of their right to appear at a disability hearing. The information collected will be used as documentation that claimants understand their rights to appear and the effects of the decision to waive this right. The respondents are claimants under Title II (Old-Age, Survivors and Disability Insurance) and Title XVI (SSI) of the Social Security Act, who wish to waive their right to a disability hearing.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Annual Burden: 10 hours.

III. *Action: Notice of OMB Approval.*

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), SSA is providing notice of OMB's approval of the information collections in 20 CFR parts 404 subpart P & 416 subpart I. In accordance with the Paperwork Reduction Act, persons are not required to respond to an information collection unless it displays a valid Office of Management and Budget control number. The OMB Number is 0960-0654, which expires October 31, 2006.

Dated: October 23, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03-27347 Filed 10-29-03; 8:45 am]

BILLING CODE 4191-02-P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given that Chapter S8 for the Office of the Inspector General (OIG) is being amended to add, revise, and delete functions; retitle the name of the Office of the Counsel to the Inspector General; as well as, make several administrative and clerical revisions. The material changes are as follows: The Immediate Office of the Inspector General is being revised to add functions; the Office of Executive Operations within the Office of the Inspector General is also being revised to add and delete functions; the Office of the Counsel to the Inspector General is being retitled; and the Office of Investigations, within the Office of

the Inspector General is being revised to add and delete functions.

Section S8.00 *The Office of the Inspector General—(Mission):*

Delete in its entirety and replace with the following:

The Office of the Inspector General (OIG) is directly responsible for meeting the statutory mission of promoting economy, efficiency, and effectiveness in the administration of Social Security Administration (SSA) programs and operations and to prevent and detect fraud, waste, abuse, and mismanagement in such programs and operations. To accomplish this mission, the OIG directs, conducts and supervises a comprehensive program of audits, evaluations and investigations, relating to SSA's programs and operations. OIG also searches for and reports systemic weaknesses in SSA programs and operations, makes recommendations for needed improvements, and corrective action.

Section S8.10 *The Office of the Inspector General —(Organization):*

Delete in its entirety and replace with the following:

The Office of the Inspector General under the leadership of the Inspector General includes the:

A. Inspector General (S8)

B. Deputy Inspector General (S8)

C. Immediate Office of the Inspector General (S8A)

D. Office of Investigations (S8B)

E. Office of Audit (S8C)

F. Office of Executive Operations (OEO) (S8L)⁵

G. Office of the Chief Counsel to the Inspector General (S8H)

Section S8.20 *The Office of the Inspector General—(Functions):*

Delete paragraph C in its entirety and replace with the following:

C. The Immediate Office of the Inspector General (S8A) provides the Inspector General and Deputy Inspector General with staff assistance on the full range of their responsibilities and administers a comprehensive Professional Responsibility and Quality Assurance program that ensures the adequacy of OIG compliance with its policies and procedures, internal controls and professional standards. In addition, the Immediate OIG oversees the Ombudsman program to provide OIG employees with confidential and informal assistance for resolving work-related conflicts, disputes, and grievances; to promote fair and equitable treatment within OIG; and to work towards improving the overall quality of worklife for OIG employees. The Immediate OIG also directs reviews and takes actions to ensure the

adequacy of OIG internal controls in accordance with the Federal Managers' Financial Integrity Act.

Delete paragraph D in its entirety and replace with the following:

D. The Office of Investigations (OI) (S8B) conducts and coordinates investigative activity related to fraud, waste, abuse, and mismanagement in SSA programs and operations including wrongdoing by individuals such as applicants, grantees, or contractors perpetrating criminal activity against SSA programs and operations. OI also investigates allegations of employee misconduct in the performance of their official duties.

This office serves as the OIG liaison to the Department of Justice on all matters relating to investigations of SSA programs and personnel, and reports to the Attorney General when OIG has reason to believe Federal criminal law has been violated. OI works with other investigative agencies and organizations on special projects and assignments. In support of its mission, OI carries out and maintains an internal quality assurance system.

Delete paragraph E in its entirety and replace with the following:

E. The Office of Audit (OA) (S8C) conducts and/or supervises comprehensive financial and performance audits of SSA's programs and operations and makes recommendations to ensure that program objectives and operational functions are achieved effectively and efficiently. Financial audits, required by the Chief Financial Officers' Act of 1990, assess whether SSA's financial statements fairly present the Agency's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management and program evaluations focused on issues of concern to SSA, the Congress, and the general public. Evaluations often focus on identifying and recommending ways to prevent and minimize program and operational fraud, waste, and abuse, as well as inefficiency and ineffectiveness, rather than detecting problems after they occur.

Delete paragraph F ⁵ in its entirety and replace with the following:

F. The Office of Executive Operations (OEO) (S8L) provides administrative and management support to the Inspector General, Deputy Inspector General and all OIG components. OEO manages OIG's external and public affairs programs and serves as the primary resource for those seeking information about OIG. OEO develops

press releases and coordinates information exchange among media outlets. OEO prepares publications and congressional correspondence and coordinates reporting requirements and interagency activities. OEO is responsible for strategic planning, organizational performance management and reporting. OEO formulates and executes the OIG budget and confers with the Office of the Commissioner, the Office of Management and Budget and the Congress on budget matters. OEO performs physical site facility and logistical planning for OIG components. OEO is responsible for property management and accountability. OEO develops and maintains internal OIG administrative and management policy and procedures. OEO performs all human resource support activities for OIG including recruitment, equal employment opportunity, personnel management, position management, performance management, disciplinary actions, staff training and development, personnel security and human resource policy. OEO provides and manages information technology for OIG. This includes the planning, design, development, testing, implementation and maintenance of hardware, software and telecommunications networks to support OIG's mission. OEO is responsible for the security of sensitive electronic data relating to investigations, audits and legal proceedings. OEO develops and administers systems security plans for OIG.

Retitle paragraph G., the Office of the Counsel to the Inspector General (OCIG) (S8H) ¹ to the Office of the Chief Counsel to the Inspector General (OCCIG).

Section S8B.00 *The Office of Investigations*—(Mission):

Delete 3rd sentence, and replace with the following:

Serves as OIG's liaison to the Department of Justice on all matters relating to investigations of SSA programs and personnel and reports to the Attorney General when OIG has reason to believe Federal criminal law has been violated. Delete 4th sentence, and replace with the following:

OI works with other investigative agencies and organizations on special projects and assignments.

Delete 5th sentence, and replace with the following:

In support of its mission, OI carries out and maintains an internal quality assurance system.

Section S8B.10 *The Office of Investigations*—(Organization):

Delete in its entirety and replace with the following:

The Office of Investigations (S8B) under the leadership of the Assistant Inspector General for Investigations, includes the:

A. Assistant Inspector General for Investigations (S8B)

B. Deputy Assistant Inspector General for Investigations—Field Operations

C. Deputy Assistant Inspector General for Investigations—National Investigative Operations

D. Immediate Office of the Assistant Inspector General for Investigations (S8B)

E. Strategic Enforcement Division (SED) (S8BA) ²

F. Enforcement Operations Division (EOD) (S8BC)

G. Critical Infrastructure Division (CID) (S8BV) ⁴

H. New York Field Division (NYFD) (S8BG)

I. Boston Field Division (BFD) (S8BH)

J. Atlanta Field Division (AFD) (S8BK)

K. Chicago Field Division (CFD) (S8BM)

L. Los Angeles Field Division (LAFD) (S8BN)

M. Dallas Field Division (DFD) (S8BP) ²

N. Philadelphia Field Division (PFD) (S8BQ)

O. St. Louis Field Division (SLFD) (S8BR)

P. Denver Field Division (DVFD) (S8BS)

Q. Seattle Field Division (SFD) (S8BT)

R. Allegation Management Division (AMD) (S8BU) ³

S. Manpower and Administration Division (MAD) (S8BW) ⁴

Section S8B.20 *The Office of Investigations*—(Functions):

Delete B in its entirety and replace with the following:

B. Deputy Assistant Inspector General for Investigations—Field Operations provides line program planning and control capability for field investigative operations. Based on program evaluations and operating reports, develops standards and guidelines for redelegation of responsibilities to field Special Agents-in-Charge. Represents the AIGI in developing and fostering optimum public relationships with all concerned in field OIG investigative activity.

Delete C in its entirety and replace with the following:

C. Deputy Assistant Inspector General for Investigations—National Investigative Operations provides line program planning and control capability for national investigative operations. Based on program evaluations and operating reports, develops standards and guidelines for redelegation of

responsibilities to Headquarters Special Agents-in-Charge. Represents the AIGI in developing and fostering optimum public relationships with all concerned in national OIG investigative activity.

Reletter C to D.

Retitle paragraph D to E and replace with the following:

E. The Strategic Enforcement Division (SED)(S8BA) develops and implements innovative anti-fraud initiatives, consistent with OIG strategic plans, to protect SSA programs and operations from fraud, waste, and abuse. SED is also responsible for planning and coordinating related multi-jurisdictional investigative activities for OI while promoting the judicious and effective use of available resources. SED responsibilities include:

1. Identifying systemic and programmatic vulnerabilities in SSA's operations and making recommendations for changes to the appropriate official.

2. In accordance with applicable law and policy, providing pertinent information from OIG records to assist Federal, State, and local investigative agencies in detecting, investigating and prosecuting fraud.^{1 2}

Retitle paragraph E to F and replace with the following:

F. The Enforcement Operations Division (EOD) (S8BC) is responsible for the administration, training, policy development, and oversight of the investigative operations conducted by components within OI. The Division is also responsible for day-to-day coordination of the investigative and administrative information flow between OI headquarters and the field division offices. EOD responsibilities include:

1. Providing liaison with other law enforcement agencies and the SSA components that require assistance or providing assistance to OI investigative field offices.

2. Preparing reports and developing projects which respond to requests and requirements established by the Inspector General, SSA organizations, or the Congress.

3. Providing oversight of the Regional Anti-Fraud Committees in each of the 10 field divisions.

4. Managing requests for forensic services and polygraphs.

5. Providing oversight for investigations of Representative Payees.

6. Providing oversight for all OI activities relating to Homeland Security.

Delete the 2nd paragraph E in its entirety.

Retitle paragraph F to G and replace with the following:

G. The Critical Infrastructure Division (CID) (S8BV) coordinates with various

SSA components and Government agencies to ensure that OIG is aware of the latest concerns, requirements, and techniques relating to critical infrastructure protection. The Division also manages the OI Electronic Crimes Team.

Retitle paragraph G to H and replace with the following:

H. The New York Field Division (NYFD) (S8BG) is responsible for conducting criminal, civil, and administrative investigations of fraud, waste, and abuse involving Social Security programs and operations within its designated geographic area. Investigative efforts by the division lead to criminal convictions, civil monetary penalties, and/or administrative sanctions.

Retitle paragraph H to I and replace with the following:

I. The Boston Field Division (BFD) (S8BH) is responsible for conducting criminal, civil, and administrative investigations of fraud, waste, and abuse involving Social Security programs and operations within its designated geographic area. Investigative efforts by the division lead to criminal convictions, civil monetary penalties, and/or administrative sanctions.

Retitle paragraph I to J and replace with the following:

J. The Atlanta Field Division (AFD) (S8BK) is responsible for conducting criminal, civil, and administrative investigations of fraud, waste, and abuse involving Social Security programs and operations within its designated geographic area. Investigative efforts by the division lead to criminal convictions, civil monetary penalties, and/or administrative sanctions.

Retitle paragraph J to K and replace with the following:

K. The Chicago Field Division (CFD) (S8BM) is responsible for conducting criminal, civil, and administrative investigations of fraud, waste, and abuse involving Social Security programs and operations within its designated geographic area. Investigative efforts by the division lead to criminal convictions, civil monetary penalties, and/or administrative sanctions.²

Retitle paragraph K to L and replace with the following:

L. The Los Angeles Field Division (LAFD) (S8BN) is responsible for conducting criminal, civil, and administrative investigations of fraud, waste, and abuse involving Social Security programs and operations within its designated geographic area. Investigative efforts by the division lead to criminal convictions, civil monetary penalties, and/or administrative sanctions.

Retitle paragraph L to M and replace with the following:

M. The Dallas Field Division (DFD) (S8BP) is responsible for conducting criminal, civil, and administrative investigations of fraud, waste, and abuse involving Social Security programs and operations within its designated geographic area. Investigative efforts by the division lead to criminal convictions, civil monetary penalties, and/or administrative sanctions.²

Retitle paragraph M to N and replace with the following:

N. The Philadelphia Field Division (PFD) (S8BQ) is responsible for conducting criminal, civil, and administrative investigations of fraud, waste, and abuse involving Social Security programs and operations within its designated geographic area. Investigative efforts by the division lead to criminal convictions, civil monetary penalties, and/or administrative sanctions.

Retitle paragraph N to O and replace with the following:

O. The St. Louis Field Division (SLFD) (S8BR) is responsible for conducting criminal, civil, and administrative investigations of fraud, waste, and abuse involving Social Security programs and operations within its designated geographic area. Investigative efforts by the division lead to criminal convictions, civil monetary penalties, and/or administrative sanctions.

Retitle paragraph O to P and replace with the following:

P. The Denver Field Division (DVFD) (S8BS) is responsible for conducting criminal, civil, and administrative investigations of fraud, waste, and abuse involving Social Security programs and operations within its designated geographic area. Investigative efforts by the division lead to criminal convictions, civil monetary penalties, and/or administrative sanctions.

Retitle paragraph P to Q and replace with the following:

Q. The Seattle Field Division (SFD) (S8BT) is responsible for conducting criminal, civil, and administrative investigations of fraud, waste, and abuse involving Social Security programs and operations within its designated geographic area. Investigative efforts by the division lead to criminal convictions, civil monetary penalties, and/or administrative sanctions.

Retitle paragraph Q to R and replace with the following:

R. The Allegation Management Division (AMD) (S8BU) plans, conducts, directs, and assists criminal and administrative investigations of alleged

violations of the Social Security laws.³ AMD responsibilities include:

1. Managing the SSA Fraud Hotline.
2. Conducting projects in response to IG requests.
3. Referring allegations to OI field divisions, other OIG or SSA offices, or other law enforcement agencies for further development or investigation depending on the nature of the allegation.

Retitle paragraph R to S and replace with the following:

S. The Manpower and Administration Division (MAD) (S8BW) is responsible for budget coordination, policy development, preparation and circulation of statistical reports relating to OI's investigative accomplishments, and formulation of staffing plans. The Division identifies and procures special technical investigative equipment for use by OI personnel. The Division manages and develops training programs for OI personnel.

Section S8C.00 *The Office of Audit—(Mission):*

Replace in its entirety:

The Office of Audit (OA) (S8C) conducts comprehensive financial and performance audits of SSA's programs and operations and makes recommendations to ensure that program objectives and operational functions are achieved effectively and efficiently. Financial audits, required by the Chief Financial Officers' Act of 1990, assess whether SSA's financial statements fairly present the Agency's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management and program evaluations focused on issues of concern to SSA, the Congress, and the general public. Evaluations often focus on identifying and recommending ways to prevent and minimize program and operational fraud, waste, and abuse as well as ineffectiveness and inefficiency, rather than detecting problems after they occur.

Section S8C.10 *The Office of Audit—(Organization):*

Delete in its entirety and replace with the following:

The Office of Audit (S8C) under the leadership of the Assistant Inspector General for Audit, includes the:

- A. Assistant Inspector General for Audit (S8C)
- B. Deputy Assistant Inspector General for Audit (S8C)
- C. Immediate Office of the Assistant Inspector General for Audit (S8C)
- D. General Management Audit Division (GMAD) (S8CB)⁵

E. Southern Audit Division (SAD) (S8CE)⁶

F. Northern Audit Division (NAD) (S8CG)⁶

G. Western Audit Division (WAD) (S8CH)⁶

H. Central Audit Division (CAD)

I. Mid-Atlantic Audit Division (MAAD)

J. Data Analysis and Technology Audit Division (DATAD) (S8CK)⁶

K. Financial Audit Division (FAD) (S8CL)⁶

L. Policy, Planning and Technical Services Division (PPTSD) (S8CM)⁵
Section S8C.20 *The Office of Audit—(Functions):*

Delete paragraph A in its entirety and replace with the following:

A. The Assistant Inspector General for Audit (S8C) is directly responsible to the Inspector General for carrying out OA's mission and providing general supervision to OA's major components.

Delete paragraph C in its entirety and replace with the following:

C. The Immediate Office of the Assistant Inspector General for Audit (S8C) includes policy, planning, and reporting and provides the Assistant Inspector General with staff assistance on the full range of his/her responsibilities.

Delete paragraph D in its entirety and replace with the following:

D. The General Management Audit Division (GMAD) (S8CB) is responsible for:

1. Performing audits and evaluations of SSA program and administrative functions.
2. Conducting short-duration, time-sensitive projects that address requests from Congress, senior SSA management, the public, and others.
3. Responding to inquiries and providing support for initiatives that encourage cooperative investigation-audit efforts.
4. Assisting other performance audit divisions in additional issue areas, such as performance monitoring.⁵

Delete paragraph E⁶ in its entirety and replace with the following:

E. The Southern Audit Division (SAD) (S8CE) plans, conducts, oversees, and reports on the results of audits, evaluations/inspections, and other reviews related to SSA's Old-Age, Survivors, and Disability Insurance, and the Supplemental Security Income Program. Specific audits, evaluations/inspections, and other reviews may focus on: Enumeration, Old-Age, Survivors and Disability Insurance Initial Claims and Post-entitlement Operations; Earnings Operations; Supplemental Security Income Initial

Claims and Postentitlement Operations; Field Office Operations; Hearings and Appeals; Disability Determination Services; Representative Payees, Performance Measures; and various general management and administrative issues related to, but not limited to, facilities management, personnel, payroll, and budgeting.

Delete paragraph F⁶ in its entirety and replace with the following:

F. The Northern Audit Division (NAD) (S8CG) plans, conducts, oversees, and reports on the results of audits, evaluations/inspections, and other reviews related to SSA's Old-Age, Survivors, and Disability Insurance Program; and the Supplemental Security Income Program. Specific audits, evaluations/inspections may focus on: Enumeration, Old-Age, Survivors, and Disability Insurance Initial Claims and Post-entitlement Operations; Earnings Operations; Supplemental Security Income Initial Claims and Post-entitlement Operations; Field Office Operations; Hearings and Appeals; Disability Determination Services; Representative Payees, Performance Measures; and various general management and administrative issues related to, but not limited to, facilities management, personnel, payroll, and budgeting.

Delete paragraph G⁶ in its entirety and replace with the following:

G. The Western Audit Division (WAD) (S8CH) plans, conducts, oversees, and reports on the results of audits, evaluations/inspections, and other reviews related to SSA's Old-Age, Survivors, and Disability Insurance Program; and the Supplemental Security Income Program. Specific audits, evaluations/inspections, and other reviews may focus on: Enumeration, Old-Age, Survivors, and Disability Insurance Initial Claims and Post-entitlement Operations; Earnings Operations; Supplemental Security Income Initial Claims and Post-entitlement Operations; Field Office Operations; Hearings and Appeals; Disability Determination Services; Representative Payees, Performance Measures; and various general Management and administrative issues related to, but not limited to, facilities management, personnel, payroll, and budgeting.

Delete paragraph H⁶ in its entirety and replace with the following:

H. The Central Audit Division (CAD) plans, conducts, oversees, and reports on the results of audits, evaluations/inspections, and other reviews related to SSA's Old-Age, Survivors, and Disability Insurance Program; and the Supplemental Security Income Program.

Specific audits, evaluations/inspections and other reviews may focus on: Enumeration, Old-Age, Survivors, and Disability Insurance Initial Claims and Post-entitlement Operations; Earnings Operations; Supplemental Security Income Initial Claims and Post-entitlement Operations; Field Office Operations; Hearings and Appeals; Disability Determination Services; Representative Payees, Performance Measures; and various general Management and administrative issues related to, but not limited to, facilities management, personnel, payroll, and budgeting.

Delete paragraph I⁶ in its entirety and replace with the following:

I. The Mid-Atlantic Audit Division (MAAD) plans, conducts, oversees, and reports on the results of audits, evaluations/inspections, and other reviews related to SSA's Old-Age, Survivors, and Disability Insurance Program; and the Supplemental Security Income Program. Specific audits, evaluations/inspections and other reviews may focus on: Enumeration, Old-Age, Survivors, and Disability Insurance Initial Claims and Post-entitlement Operations; Earnings Operations; Supplemental Security Income Initial Claims and Post-entitlement Operations; Field Office Operations; Hearings and Appeals; Disability Determination Services; Representative Payees, Performance Measures; and various general Management and administrative issues related to, but not limited to, facilities management, personnel, payroll, and budgeting.

Delete paragraph J in its entirety and replace with the following:

J. The Data Analysis and Technology Audit Division (DATAD) (S8CK) plans, conducts, oversees, and reports on the results of audits of SSA's centralized automated systems. The division is also responsible for reviews of general and application controls in SSA's automated data processing systems and for reviews of the operational efficiency and effectiveness of SSA's data processing operations.⁶

Add paragraph K as follows:

K. The Financial Audit Division (FAD) (S8CL) plans, conducts, oversees, and reports on the results of audits of Agency financial statements. The division is responsible for:⁶

1. Financial management audits and reviews, as defined in the Chief Financial Officers' Act of 1990, to include audits of accounting and financial reporting, financial systems, asset management, information resource management, budget execution, and internal controls.

2. Auditing and reviewing finance contracts and Disability Determination Services' administrative costs.

3. Monitoring SSA's performance in accordance with the Government Performance and Results Act by performing an oversight role.⁵

4. Performing various financial related audits, evaluations/inspections and other reviews of SSA's Old-Age, Survivors, and Disability Insurance Program; and the Supplemental Security Income Program. Specific audit, evaluations/inspections, and reviews may focus on: Enumeration, Old-Age, Survivors, and Disability Insurance Initial Claims and Post-entitlement Operations; Earnings Operations; Supplemental Security Income Initial Claims and Post-entitlement Operations; Field Office Operations; Hearings and Appeals; Disability Determination Services and Representative Payees.⁶

Add paragraph L as follows:

L. The Policy, Planning and Technical Services Division (PPTSD) (S8CM) provides the Assistant Inspector General and the Deputy Assistant Inspector General with technical assistance, operational, and staff support on the full range of his/her responsibilities, which include:

1. Developing policies and procedures, standards, and instructions for all OIG audit and evaluation activities, and ensuring compliance with generally accepted Government auditing standards; the President's Council on Integrity and Efficiency inspection standards; and other legal, regulatory, and administrative requirements.

2. Developing policies and procedures for OA's internal quality assurance system to provide reasonable assurance that applicable laws, regulations, procedures, standards, and other requirements are followed in all audit, evaluation and review activities.

3. Managing OA's management information system, audit resolution, training, and technical support for OIG audits, evaluations, and reviews.⁵

Retitle: Section S8H.00 *The Office of the Counsel to the Inspector General—(Mission)*: to *The Office of the Chief Counsel to the Inspector General—(Mission)*:

Delete: The Office of the Counsel to the Inspector General (OCIG) in the 1st sentence and replace it with: The Office of the Chief Counsel to the Inspector General (OCCIG). Delete: OCIG¹ in sentences 2, 3, and 4, and replace with OCCIG.

Delete Section S8H.10 *The Office of the Counsel to the Inspector General—(Organization)*: in its entirety and replace with the following:

Section S8H.10 *The Office of the Chief Counsel to the Inspector General—(Organization)*:

OCCIG (S8H) under the leadership of the Chief Counsel to the Inspector General, includes:

A. Chief Counsel to the Inspector General (S8H).

B. Deputy Chief Counsel to the Inspector General (S8H).¹

C. The Immediate Office of the Chief Counsel to the Inspector General (S8H).

Retitle Section S8H.20 *The Office of the Counsel to the Inspector General—(Functions)*: to Section S8H.20 *The Office of the Chief Counsel to the Inspector General—(Functions)*

Delete: The Counsel to the Inspector General in the 1st sentence under paragraph A and replace with: The Chief Counsel to the Inspector General.¹

Delete: The Deputy Counsel to the Inspector General¹ in the 1st sentence under paragraph B and replace with: The Deputy Chief Counsel to the Inspector.

Delete: The Immediate Office of the Counsel¹ in the 1st sentence under paragraph C and replace with: The Immediate Office of the Chief Counsel to the Inspector General.

Subchapter added **Federal Register—** July 11, 1996

Section S8L.00 *The Office of Executive Operations—(Mission)*:

Delete in its entirety paragraph G⁵ and replace with the following:

G. The Office of Executive Operations (OEO) provides administrative and management support to the Inspector General, Deputy Inspector General and all OIG components. OEO manages OIG's external public affairs programs and serves as the primary resource for those seeking information about OIG. OEO develops press releases and coordinates information exchange among media outlets. OEO prepares publications and congressional correspondence and coordinates reporting requirements and interagency activities. OEO is responsible for strategic planning, organizational performance management and reporting. OEO formulates and executes the OIG budget and confers with the Office of the Commissioner, the Office of Management and Budget and the Congress on budget matters. OEO performs physical site facility and logistical planning for OIG components. OEO is responsible for property management and accountability. OEO develops and maintains internal OIG administrative and management policy and procedures. OEO performs all human resource support activities for OIG including recruitment, equal

employment opportunity, personnel management, position management, performance management, disciplinary actions, staff training and development, personnel security and human resource policy. OEO provides and manages information technology for OIG. This includes the planning, design, development, testing, implementation and maintenance of hardware, software and telecommunications networks to support OIG's mission. OEO is responsible for the security of sensitive electronic data relating to investigations, audits and legal proceedings. OEO develops and administers systems security plans for OIG.

Section S8L.10 *The Office of Executive Operations—(Organization):*

Delete in its entirety and replace with the following:

The Office of Executive Operations (S8L) under the leadership of the Assistant Inspector General for Executive Operations includes the:

- A. Assistant Inspector General for Executive Operations (S8L)
- B. Deputy Assistant Inspector General for Executive Operations (S8L)
- C. Immediate Office of the Assistant Inspector General for Executive Operations (S8L).
- D. Budget and Logistics Division (S8L-1)
- E. Human Resources Division (S8LA).
- F. Information Technology Division (S8LC).
- G. External Affairs Division (S8LE).

Section S8L.20 *The Office of Executive Operations—(Functions):*

Delete paragraph A in its entirety and replace with the following:

A. The Assistant Inspector General for Executive Operations (AIGEO) (S8L) is directly responsible to the Inspector General for carrying out the OEO mission and providing general supervision to the major components of OEO.

Delete paragraph B in its entirety and replace with the following:

B. The Deputy Assistant Inspector General for Executive Operations (DAIGEO)(S8L) is responsible for assisting the AIGEO in carrying out his/her responsibilities.

Delete paragraph C in its entirety and replace with the following:

C. The Immediate Office of the Assistant Inspector General for Executive Operations (S8L) provides the AIGEO with staff assistance on the full range of his/her responsibilities.

Delete paragraph D in its entirety and replace with the following:

D. The Budget and Logistics Division (BFD)(S8L-1) is responsible for formulating, presenting and executing

the OIG budget; performing a wide range of analytical, technical, and advisory functions related to the budgetary process; and analyzing financial and economic issues and activities facing the organization including a review and analysis of proposed and/or enacted legislation and regulations. The Division is also responsible for coordinating and integrating a national facilities management program including property and asset management. The Budget and Logistics Division coordinates the development of OIG's Strategic Plan and prepares the annual organizational performance plan. This division prepares and maintains OIG administrative policies and procedures.

Delete paragraph E in its entirety and replace with the following:

E. The Human Resources Division (HRD)(S8LA) is responsible for the development, presentation, and implementation of OIG nationwide personnel management policy; and a national personnel management and training program.

Delete paragraph F in its entirety and replace with the following:

F. The Information Technology Division (SSD)(S8LC) is responsible for the planning design, development testing and implementation of hardware, software and telecommunications systems for OIG nationwide. These responsibilities include developing and enforcing network policies; designing system interfaces; monitoring and evaluating hardware and telecommunications lines; developing, monitoring and evaluating software applications and associated interfaces with network devices. The division is also responsible for the security of sensitive data relating to investigations, audits, and legal proceedings which is kept on OIG computer systems as well as the administration of systems security plans for the OIG.

Add paragraph G as follows:

G. The External Affairs Division (EAD) (S8LE) is responsible for directing the OIG external and public affairs program. EAD coordinates interagency activities and responds to media, congressional and constituent inquiries. EAD prepares press releases, coordinates press conferences, and develops congressional testimony. EAD prepares speeches and publications, and communicates OIG's planned and current activities and their results to the Commissioner and the Congress as well as other entities.

Subchapter added **Federal Register—** December 15, 1999.

¹ **Federal Register—** July 11, 1996.

² **Federal Register—** August 1, 1997.

³ **Federal Register—** May 22, 1998.

⁴ **Federal Register—** September 22, 1998.

⁵ **Federal Register—** December 15, 1999.

⁶ **Federal Register—** December 21, 2001.

Dated: August 15, 2003.

James G. Huse, Jr.,

Inspector General.

[FR Doc. 03-26992 Filed 10-29-03; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Harris and Brazoria Counties, TX

AGENCY: Federal Highway Administration (FHWA), TxDOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project to improve State Highway 35 in Harris and Brazoria Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. John Mack, P.E., Federal Highway Administration, Texas Division, 300 East 8th Street, Room 826, Austin, Texas 78701, Telephone (512) 536-5960.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT), will prepare an Environmental Impact Statement (EIS) on a proposal for transportation improvements within the State Highway 35 corridor from Bellfort Road in Harris County to Farm-to-Market Road 1462 in Brazoria County. The EIS will be conducted concurrently with a Major Corridor Feasibility Study (MCFS) that will examine and evaluate all reasonable and feasible modal alternatives for transportation improvements within the State Highway 35 corridor from Interstate Highway 45 to State Highway 288 in Angleton. The proposed action could include a combination of highway, toll, and transit components for the facility of approximately 22 miles in length, built on a new location within the above limits. The majority of the corridor crosses heavily urbanized regions of Harris and Brazoria Counties. Cities and towns in the region include the cities of Houston, Brookside Village, Pearland, and Alvin.

Alternatives to be studied include "No-action" (the no-build alternative), Transportation System Management (TSM)/Transportation Demand Management (TDM) alternative, mass transit alternative and roadway build alternatives. The EIS will evaluate

potential impacts from construction and operation of the proposed transportation improvements including, but not limited to, the following: transportation impacts (construction detours, construction traffic, mobility improvement and evacuation route improvements), air and noise impacts from construction equipment and operation of the facility, water quality impacts from construction area and roadway storm water runoff, impacts to waters of the United States including wetlands from right of way encroachment, impacts to historic and archeological resources, impacts to floodplains, and impacts and/or potential displacements to residents and businesses.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings will be held on dates to be determined at a later time. A formal scoping meeting will be held in January 2004. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. A copy of the Draft EIS will be made available for public review prior to the public hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding governmental consultation on federal programs and activities apply to this program.)

John R. Mack,

District Engineer.

[FR Doc. 03-27364 Filed 10-22-03; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Montgomery and Grimes Counties, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent (revised).

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be

prepared for a proposed transportation project in Montgomery and Grimes Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. John Mack, P.E., Federal Highway Administration, Texas Division, 826 Federal Building, 300 East 8th Street, Austin, Texas 78701, Telephone 512-536-5960.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) will prepare an environmental impact statement (EIS) for improvements in the SH 249 corridor within Montgomery and Grimes Counties, Texas. The project study area is approximately 15 miles in length from FM 149 in Montgomery County to FM 1774 in Grimes County. Cities within the study area include Pinehurst, Magnolia, and Todd Mission.

A Major Investment Study (MIS) for the project was completed in 2002. The MIS evaluated modal, configuration, and route corridor alternatives within the overall study area and recommended an alternative which was the most feasible modal, configuration, and route corridor that met the regions transportation needs, while minimizing impacts to the surrounding environment. The most feasible corridor alternative studied in the MIS was selected based on the detailed evaluation of the viable alternatives, as well as public input. This alternative encompasses two (2) general-purpose lanes in each direction, including auxiliary lanes between on-ramps and off-ramps where appropriate. The EIS will study the overall SH 249 corridor with all corridor alternatives considered in detail and recommend the most feasible corridor. The EIS is authorized pursuant to the Texas Transportation Commission Minute Order No. 104908 issued January 26, 1995.

A public scoping meeting will be held in December of 2003. The purpose of the public scoping meeting is to request comments and identify issues that will be considered during the evaluation of alignment alternatives and preparation of the EIS. All interested citizens are encouraged to attend these meetings. Large-scale maps of the project area will be displayed at the meeting. This will be the first in a series of meetings to solicit public comments on the proposed action. In addition, a public hearing will be held.

The EIS will evaluate potential impacts from construction and operation of the proposed roadway including, but not limited to, the following: transportation impacts (construction detours, construction traffic, mobility improvement and

evacuation improvement), air, and noise impacts from construction equipment and operation of the facilities, water quality impacts from construction area and roadway storm water runoff, impacts to water of the United States including wetlands from right-of-way encroachment, impacts to historic and archeological resources, impacts to floodplains, and impacts and/or potential displacements to residents and businesses.

Letters describing the proposed action and soliciting comments will be sent to appropriate agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding governmental consultation on Federal Programs and activities apply to this program.)

John R. Mack,

District Engineer.

[FR Doc. 03-27365 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2003-16241]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 24 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before December 1, 2003.

ADDRESSES: You may submit comments identified by any of the following

methods. Please identify your comments by the DOT DMS Docket Number FMCSA-2003-16241.

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

• Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

• Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the "help" section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. The 24 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety.

Qualifications of Applicants

1. Ronald G. Austin

Mr. Austin, 55, has amblyopia in his right eye. His visual acuity in the right eye is 20/100 and in the left, 20/20. His ophthalmologist examined him in 2003 and certified, "In my medical opinion, Mr. Ronald Austin has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Austin reported that he has driven straight trucks and tractor-trailer combinations for 17 years, accumulating 340,000 miles in the former and 85,000 miles in the latter. He holds a Class AM CDL from Alabama. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

2. William E. Barrett

Mr. Barrett, 70, has had macular degeneration in his left eye for 5 years. His best-corrected visual acuity in the right eye is 20/25 and in the left, counting fingers. Following an examination in 2003, his ophthalmologist stated, "Mr. Barrett has had a long-standing decrease in vision in the left eye. His right visual acuity as well as peripheral visual fields remain excellent. I feel that he can continue to perform his driving duties as in the

past." Mr. Barrett reported that he has driven straight trucks and tractor-trailer combinations for 49 years, accumulating 735,000 miles in the former and 245,000 miles in the latter. He holds a Class A CDL from Connecticut. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

3. Eric D. Bennett

Mr. Bennett, 40, has a chorioretinal scar in his left eye due to trauma in 1997. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/80. His ophthalmologist examined him in 2003 and stated, "In my medical opinion, Mr. Bennett has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Bennett submitted that he has driven straight trucks for 4 years, accumulating 200,000 miles, and tractor-trailer combinations for 10 years, accumulating 900,000 miles. He holds a Class A CDL from New Hampshire. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

4. Zack Bradford, Sr.

Mr. Bradford, 48, is blind in his right eye due to trauma in 1993. His visual acuity in the left eye is 20/20. His optometrist examined him in 2002 and stated, "Mr. Bradford has sufficient vision to drive a commercial vehicle." Mr. Bradford reported that he has driven straight trucks for 17 years, accumulating 238,000 miles. He holds a Class C driver's license from Georgia. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

5. Rickey C. Dalton

Mr. Dalton, 51, lost his left eye due to an accident that occurred in 1986. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2003, his optometrist certified, "His right eye is sufficient to operate and perform driving tasks in a commercial vehicle." Mr. Dalton reported that he has driven tractor-trailer combinations for 14 years, accumulating 1.8 million miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

6. Dustin G. Davis

Mr. Davis, 26, has a macular scar in his right eye due to trauma in 1995. His visual acuity in the right eye is 20/200 and in the left, 20/15. Following an examination in 2003, his ophthalmologist certified, "In my opinion, despite Mr. Davis' visual acuity

in the right eye which is secondary to a macular scar and is a stable condition which should not progress over time, I feel that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Davis reported that he has driven straight trucks for 6 years, accumulating 180,000 miles, and tractor-trailer combinations for 4 years, accumulating 200,000 miles. He holds a Class A CDL from Wyoming. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 12 mph.

7. John K. DeGolier

Mr. DeGolier, 44, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2003, his ophthalmologist certified, "Because of his previous track record of having no problems with driving commercially and because of his full visual fields and good clarity of vision to his left eye, I think it would be reasonable for Mr. DeGolier to operate a commercial vehicle safely." Mr. DeGolier reported that he has driven straight trucks for 15 years, accumulating 150,000 miles, and tractor-trailer combinations for 5 years, accumulating 75,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

8. Martiano L. Espinosa

Mr. Espinosa, 46, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2003, his optometrist certified, "I feel that Mr. Espinosa has sufficient vision to perform his commercial driving tasks because he has good peripheral vision and good overall acuity in both eyes." Mr. Espinosa reported that he has driven straight trucks for 10 years, accumulating 336,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

9. Roy M. Field

Mr. Field, 62, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/70. Following an examination in 2003, his ophthalmologist certified, "Mr. Field can safely operate a commercial vehicle with his glasses correction." Mr. Field reported that he has driven straight trucks for 3 years,

accumulating 139,000 miles, and tractor-trailer combinations for 34 years, accumulating 1.4 million miles. He holds a Class DM driver's license from Alabama. His driving record for the last 3 years shows one accident and no convictions for moving violations in a CMV. According to the police report, Mr. Field was attempting to make a right turn when another driver passing on the right in a storage lane struck his vehicle. The other driver was cited for "unsafe passing on right." Mr. Field was not cited.

10. Derek T. Ford

Mr. Ford, 45, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/25 and in the left, 20/400. Following an examination in 2003, his ophthalmologist certified, "By my medical testing and in my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Ford reported that he has driven straight trucks for 26 years, accumulating 1.5 million miles, and tractor-trailer combinations for 1 year, accumulating 45,000 miles. He holds a Class B CDL from Maryland. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

11. James G. LaBair

Mr. LaBair, 56, has counting fingers vision in his right eye due to an injury in November 1981. His best-corrected visual acuity in the left eye is 20/25. Following an examination in 2003, his optometrist certified, "At this time with Mr. LaBair's current visual status, I feel that his vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. LaBair reported that he has driven straight trucks for 1 year, accumulating 35,000 miles, and tractor-trailer combinations for 19 years, accumulating 1.9 million miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

12. Dennis A. Leschke

Mr. Leschke, 58, had a traumatic cataract removed from his left eye in 1956. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/50. Following an examination in 2003, his optometrist certified, "In my medical opinion, this patient has sufficient vision to operate a commercial vehicle." Mr. Leschke reported that he has driven straight trucks for 40 years, accumulating 600,000 miles. He holds a Class D

driver's license from Oklahoma. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

13. Lonnie Lomax, Jr.

Mr. Lomax, 31, has had a retinal scar in his right eye for 7 years. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. His optometrist examined him in 2003 and certified, "In my opinion, Mr. Lomax has sufficient vision to operate a commercial vehicle." Mr. Lomax submitted that he has driven tractor-trailer combinations for 6 years, accumulating 48,000 miles. He holds a Class A CDL from Illinois. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

14. Ernesto R. Martinez

Mr. Martinez, 41, has a corneal scar secondary to an injury in the right eye at age 1. His visual acuity in the right eye is 20/80 and in the left, 20/20. Following an examination in 2003, his optometrist certified, "In my medical opinion Mr. Martinez has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Martinez reported that he has driven straight trucks for 4 years, accumulating 275,000 miles, and tractor-trailer combinations for 2 years, accumulating 49,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

15. Bennet G. Maruska

Mr. Maruska, 50, lost the vision in his right eye due to an injury at age 15. His best-corrected visual acuity in the left eye is 20/20. His optometrist examined him in 2003 and certified, "I believe that in review of revisions required to operate a commercial vehicle, Bennet's vision qualifies for sufficient vision to perform the driving tasks required for commercial driving." Mr. Maruska reported that he has driven tractor-trailer combinations for 16 years, accumulating 360,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

16. James T. McGinnis

Mr. McGinnis, 40, has amblyopia in his left eye. His visual acuity in the right eye is 20/20 and in the left, 20/100. Following an examination in 2003, his optometrist stated, "In my opinion, Mr. McGinnis has sufficient vision to perform the driving tasks to operate a

commercial vehicle." Mr. McGinnis submitted that he has driven straight trucks for 20 years, accumulating 150,000 miles, and tractor-trailer combinations for 13 years, accumulating 1.2 million miles. He holds a Class A CDL from Texas. His driving record shows one accident and no convictions for moving violations in a CMV during the last 3 years. According to the accident report, Mr. McGinnis was attempting to make a right turn when another driver also attempted to turn right by driving on the shoulder. The report indicated that the other driver contributed to the collision by "turning improperly—wrong lane." Mr. McGinnis was not cited.

17. Gary L. Miller

Mr. Miller, 61, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/30 and in the left, 20/60. Following an examination in 2003 his optometrist stated, "Mr. Miller's driving experience and life-long visual adaptation make him quite capable of driving commercial vehicles safely." Mr. Miller submitted that he has driven straight trucks for 30 years, accumulating 750,000 miles, and tractor-trailer combinations for 12 years, accumulating 840,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—"failure to yield right of way to an emergency vehicle"—in a CMV.

18. Jack D. Miller

Mr. Miller, 46, has had a retinal and iridic coloboma in his left eye since birth. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. His optometrist examined him in 2003 and certified, "With an excellent driving history, stable visual condition and 20/20 potential, I do believe Jack Miller would be safe to drive a commercial vehicle." Mr. Miller reported that he has driven straight trucks for 10 years, accumulating 100,000 miles, and tractor-trailer combinations for 18 years, accumulating 1.6 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 19 mph.

19. Ezequiel M. Ramirez

Mr. Ramirez, 45, lost his right eye due to trauma 20 years ago. His visual acuity in the left eye is 20/20. Following an examination in 2003, his optometrist certified, "In my medical opinion, Ezequiel, has sufficient vision in his left

eye to perform the driving tasks required to operate a commercial vehicle, and has reported performing these driving tasks for the past five to ten years." Mr. Ramirez reported that he has driven tractor-trailer combinations for 5 years, accumulating 816,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 10 mph.

20. Carl W. Skinner, Jr.

Mr. Skinner, 47, has had a macular scar in his left eye since 1997 due to toxoplasmosis. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/400. Following an examination in 2003, his optometrist stated, "Carl Skinner, in my opinion, has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Skinner submitted that he has driven straight trucks for 15 years, accumulating 375,000 miles, and tractor-trailer combinations for 2 years, accumulating 30,000 miles. He holds a Class A CDL from Ohio. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

21. Doyce J. Soriez

Mr. Soriez, 70, experienced a retinal artery occlusion in his left eye in 1999. His best-corrected visual acuity is 20/20 in the right eye and 20/50 in the left. Following an examination in 2003, his ophthalmologist stated, "In my opinion, Mr. Soriez has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Soriez reported that he has driven straight trucks for 1 year, accumulating 20,000 miles, tractor-trailer combinations for 1 year, accumulating 800 miles, and buses for 13 years, accumulating 988,000 miles. He holds a Class D chauffeur's license from Louisiana. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

22. Peter D. Wehner

Mr. Wehner, 27, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/50. Following an examination in 2003, his optometrist certified, "I see no indication from a visual standpoint that he would be unable to properly handle the visual tasks required in operating a commercial motor vehicle." Mr. Wehner reported that he has driven straight trucks for 4 years, accumulating 160,000 miles. He holds a Class B CDL from

Minnesota. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

23. Howard W. Williams

Mr. Williams, 54, has retinal scarring in his right eye due to trauma at age 2. His best-corrected visual acuity is 20/200 in the right eye and 20/20 in the left. His optometrist examined him in 2003 and certified, "In my opinion, Mr. Williams has sufficient vision to drive a commercial vehicle." Mr. Williams reported that he has driven buses for 21 years, accumulating 874,000 miles. He holds a Class D chauffeur's license from Louisiana. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

24. Jack E. Wilson

Mr. Wilson, 55, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2003, his ophthalmologist certified, "It is my medical opinion that he currently has adequate vision to perform the visual tasks required pertaining to the operation of a commercial vehicle." Mr. Wilson reported that he has driven straight trucks for 24 years, accumulating 2.8 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: October 24, 2003.

Pamela M. Pelcovits,
Office Director, Policy, Plans, and Regulations.

[FR Doc. 03-27384 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2003-15892]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 29 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: <http://dmses.dot.gov>.

Background

On September 5, 2003, the FMCSA published a Notice of its receipt of applications from 30 individuals, and requested comments from the public (68 FR 52811). The 30 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Lauren C. Allen, Tracey A. Ammons, Randy B. Combs, William J. Corder, Robert L. Cross, Jr., William P. Davis, Dennie R. Ferguson, Edward J. Genovese, Dewayne E. Harms, Mark D. Kraft, David F. LeClerc, Roger J. Mason, David L. Menken, Richard L. Messinger, James M. Nelson, Edward J. Perfetto, Keith G. Reichel, Carson E. Rohrbaugh, Ronald L. Roy, Robert E. Sanders, Earl W. Sheets, James T. Simmons, Donald J. Snider, Ralphis L. Tisdale, Jesse L. Townsend, Thomas A. Valik, Jr., Thomas D. Walden, James A. Welch, John M. Whetham, and Michael E. Yount.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 30 applications on their merits and made a determination to grant the exemptions to 29 of them. The comment period closed on October 6,

2003. One comment was received, and its contents were carefully considered by the FMCSA in reaching the final decision to grant the exemptions.

The FMCSA has not made a decision on the application of Edward J. Perfetto. Subsequent to the publication of the notice of applications and request for comments, the agency received additional information from its check of his motor vehicle record and we are evaluating that information. A decision on this application will be made in the future.

Vision And Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the agency has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FHWA-98-4334.) The panel's conclusion supports the agency's view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 29 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, corneal and retinal scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but nine of the applicants were either born with their vision impairments or have had them since childhood. The nine individuals who

sustained their vision conditions as adults have had them for periods ranging from 4 to 48 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 29 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 42 years. In the past 3 years, six of the drivers have had convictions for traffic violations. Three of these convictions were for speeding, two for "disregarding a traffic control device," one for "obstructing an intersection," and one for "truck off truck route." Three drivers were involved in an accident but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the September 5, 2003 notice (68 FR 52811). Since there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published at 68 FR 52811.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to

restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket. (FHWA-98-3637)

We believe we can properly apply the principle to monocular drivers, because data from a former FMCSA waiver study program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964

California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 29 applicants receiving an exemption, we note that the applicants have had only three accidents and seven traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to 29 of the 30 applicants listed in the September notice (68 FR 52811).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 29

individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received one comment in this proceeding. The comment was considered and is discussed below.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the FMCSRs, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

After considering the comments to the docket and based upon its evaluation of the 29 exemption applications, the FMCSA exempts Lauren C. Allen, Tracey A. Ammons, Randy B. Combs,

William J. Corder, Robert L. Cross, Jr., William P. Davis, Dennie R. Ferguson, Edward J. Genovese, Dewayne E. Harms, Mark D. Kraft, David F. LeClerc, Roger J. Mason, David L. Menken, Richard L. Messinger, James M. Nelson, Keith G. Reichel, Carson E. Rohrbaugh, Ronald L. Roy, Robert E. Sanders, Earl W. Sheets, James T. Simmons, Donald J. Snider, Ralphis L. Tisdale, Jesse L. Townsend, Thomas A. Valik, Jr., Thomas D. Walden, James A. Welch, John M. Whetham, and Michael E. Yount from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: October 27, 2003.

Pamela M. Pelcovits,

Office Director, Policy, Plans, and Regulations.

[FR Doc. 03-27385 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 11, 2003. No comments were received.

DATES: Comments must be submitted on or before December 1, 2003.

FOR FURTHER INFORMATION CONTACT:

Michael H. Franklin, Maritime Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: 202-366-2628; Fax: 202-366-3954; or e-mail:

michael.franklin@marad.dot.gov.

Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Automated Mutual-Assistance Vessel Rescue System (AMVER).

OMB Control Number: 2133-0025.

Type of Request: Extension of currently approved collection.

Affected Public: U.S.-flag and U.S. citizen-owned vessels that are required to respond under current statute and regulation.

Forms: None.

Abstract: This collection of information is used to gather information regarding the location of U.S.-flag vessels and certain other U.S. citizen-owned vessels for the purpose of search and rescue in the saving of lives at sea and for the marshalling of ships for national defense and safety purposes. This collection consists of vessels that transmit their positions through various electronic means.

Annual Estimated Burden Hours: 2,253 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Date: October 24, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03-27298 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2003-16248]

Maersk Line Ltd.; Extension of Comment Period

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Extension of comment period.

SUMMARY: The Maritime Administration (MARAD) is hereby giving notice that the closing date for filing comments in Docket No. MARAD 2003-16248, Notice of Request to Transfer Maritime Security Program Operating Agreements MA/MSP-29 through MA/MSP-43 to Maersk Line, Limited, has been extended to the close of business (5 p.m. EST) November 3, 2003. The notice of request in Docket No. MARAD 2003-16248 was published in the **Federal Register** of October 3, 2003 (68 FR 57507-57508).

Dated: October 24, 2003.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03-27334 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****[Docket NHTSA-99-5087]****Rulemaking Program Meeting****AGENCY:** National Highway Traffic Safety Administration, DOT.**ACTION:** Notice of NHTSA rulemaking status meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular public meeting relating to its vehicle regulatory program will be held on Thursday, November 20, 2003, beginning at 9:45 a.m. and ending at approximately 12 p.m. at the Best Western Gateway International Hotel in Romulus, Michigan 48174. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Microsoft Word) by Friday, November 7, 2003, to the address shown below or by e-mail. If sufficient time is available, questions received after November 7, may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by November 7, 2003, and the issues to be discussed will be posted on NHTSA's Web site (www.nhtsa.dot.gov) by Monday, November 17, 2003, and also will be available at the meeting. The agency will hold a second public meeting on November 20, devoted exclusively to a presentation of research and development programs. This meeting will begin at 1:30 p.m. and end at approximately 5 p.m. This meeting is described more fully in a separate announcement.

ADDRESSES: Questions for the November 20 NHTSA Rulemaking Status Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NVS-100, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax number: 202-366-4329, e-mail: dlopez@nhtsa.dot.gov. The meeting will be held at the Best Western Gateway International Hotel, Romulus, Michigan 48174. The telephone number is 734-728-2800.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366-1810.

SUPPLEMENTARY INFORMATION: NHTSA has held regular public meetings to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Rulemaking Office. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 80 to 150 pages) upon request to DOT Docket, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10 a.m. to 5 p.m. The transcript may also be accessed electronically at <http://dms.dot.gov>, at docket NHTSA-99-5087. Questions to be answered at the public meeting should be organized by categories to help us process the questions into an agenda form more efficiently.

Sample format:

- I. Rulemaking
 - A. Crash avoidance
 - B. Crashworthiness
 - C. Other Rulemakings
- II. Consumer Information
- III. Harmonization
- IV. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366-1810, by COB Monday, November 17, 2003.

Issued: October 8, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03-27383 Filed 10-29-03; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board****[STB Finance Docket No. 34414]**

**Union Pacific Railroad Company—
Temporary Trackage Rights
Exemption—The Burlington Northern
and Santa Fe Railway Company**

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant temporary overhead trackage rights to Union Pacific Railroad

Company (UP) between BNSF milepost 6.1 near Fort Worth, TX, and BNSF milepost 218.1 near Temple TX, a distance of approximately 129.2 miles.¹

The transaction is scheduled to become effective on November 1, 2003, and the authorization is scheduled to expire on or about December 23, 2003. The purpose of the temporary trackage rights is to facilitate maintenance work on UP lines.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n v. United States*, 675 F.2d 1248 (D.C. Cir. 1982).

This notice is filed under 49 CFR 1180.2(d)(8). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34414, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: October 22, 2003.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 03-27236 Filed 10-29-03; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

**Submission for OMB Review;
Comment Request**

October 23, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by

¹ UP states that, because the trackage rights involve BNSF subdivisions with non-contiguous mileposts, total mileage does not correspond to the milepost designations of the endpoints.

calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11100, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 1, 2003, to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506-0003.

Form Number: FinCEN 103-N

(Formerly IRS Form 8852).

Type of Review: Revision.

Title: Currency Transaction Reports by Casinos—Nevada.

Description: Casinos in Nevada file Form 103-N for currency transactions in excess of \$10,000 a day pursuant to 31 U.S.C. 5313(a) and 31 CFR 103.22(a)(2) and Nevada rule 6A, Criminal investigators, and taxation and regulatory authorities use the form, during the course of investigations involving financial crimes.

Respondents: Business or other for-profit, Federal Government, State, local or tribal government.

Estimated Number of Respondents/Recordkeepers: 115.

Estimated Burden Hours Per Respondent/Recordkeeper: 19 minutes.

Frequency of Response: Other (as required).

Estimated Total Reporting/Recordkeeping Burden: 54,800 hours.

Clearance Officer: Steve Rudzinski, Financial Crimes Enforcement Network, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182, (703) 905-3845.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395-7316.

Mary A. Able,

Treasury PRA Clearance Officer.

[FR Doc. 03-27349 Filed 10-29-03; 8:45 am]

BILLING CODE 4810-02-P

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11100, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 1, 2003, to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513-0107.

Form Number: TTB F 5220.6.

Type of Review: Extension.

Title: Monthly Report—Tobacco Products Importer.

Description: Reports of the lawful importation and disposition of tobacco products dealers are necessary to determine whether those issued the permits required by 26 U.S.C. 5713 should be allowed to continue their operations or renew their permits.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,500.

Estimated Burden Hours Per

Respondent: 48 minutes.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 14,400 hours.

Clearance Officer: William H. Foster, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005, (202) 927-8210.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 396-7316.

Mary A. Able,

Treasury PRA Clearance Officer.

[FR Doc. 03-27350 Filed 10-29-03; 8:45 am]

BILLING CODE 4810-31-P

ACTION: Notice.

SUMMARY: This notice announces the interest rate for use in Federal debt collection and for discount and rebate evaluation. Pursuant to Section 11 of the Debt Collection Act of 1982, as amended, 31 U.S.C. 3717, the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the U.S. Government.

Treasury's Cash Management requirements (I TFM 6-8000) prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of cash discounts. In addition, 5 CFR 1315.8 of the Prompt Payment rule on "Rebates" requires that this rate be used in determining whether agencies should pay purchase card invoices when the card issuer offers rebates.

Notice is hereby given that the applicable rate is 1 percent for calendar year 2004.

DATES: The rate will be in effect for the period beginning on January 1, 2004 and ending on December 31, 2004.

FOR FURTHER INFORMATION CONTACT:

Inquires should be directed to the Risk Management Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227 (Telephone: (202) 874-6650).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Public Law 95-147, 91 Stat. 1227. The rate is computed each year by averaging Treasury Tax and Loan (TT&L) account investment rates for the 12-month period ending every September 30, rounded to the nearest whole percentage, for applicability effective January 1. The 1 percent rate that becomes effective January 1, 2004 reflects the average investment rates for the 12-month period that began October 1, 2002 and ended September 30, 2003. The rate is subject to quarterly revisions if the annual average, on a 12-month moving average basis, changes by 2 percent.

Betsy H. Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 03-27351 Filed 10-29-03; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 22, 2003.

The Department of the Treasury has submitted the following public

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

Corrections

Federal Register

Vol. 68, No. 210

Thursday, October 30, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 32 and 52****[FAC 2001–16; FAR Case 2002–018;
Item I]****RIN 9000–AJ61****Federal Acquisition Regulation;
Central Contractor Registration***Correction*

In rule document 03–24582 beginning on page 56669 in the issue of

Wednesday, October 1, 2003 make the following corrections:

32.1110 [Corrected]

1. On page 56674, in section 32.1110(a)(2)(i), in the first column, in the second line, “Transfer\Other” should read “Transfer—Other”.

52.204-7 [Corrected]

2. On page 56675, in section 52.204-7, in the first column, after paragraph (h), add “(End of clause)”.

[FR Doc. C3–24582 Filed 10–29–03; 8:45 am]

BILLING CODE 1505–01–D



Federal Register

**Thursday,
October 30, 2003**

Part II

Environmental Protection Agency

40 CFR Part 63

**National Emission Standards for
Hazardous Air Pollutants: Taconite Iron
Ore Processing; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63****[OAR 2002-0039; FRL-7551-2]****RIN 2060-AJ02****National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for taconite iron ore processing facilities. The final standards establish emission limitations for hazardous air pollutants (HAP) emitted from new and existing ore crushing and handling operations, ore dryers, indurating furnaces, and finished pellet handling operations. The final standards will implement section 112(d) of the Clean Air Act (CAA) by

requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by taconite iron ore processing facilities include metal compounds (such as manganese, arsenic, lead, nickel, chromium, and mercury), products of incomplete combustion (including formaldehyde), and the acid gases hydrogen chloride (HCl) and hydrogen fluoride (HF). Exposure to these substances has been demonstrated to cause adverse health effects, including chronic and acute disorders of the blood, heart, kidneys, reproductive system, respiratory system and central nervous system. Some of these substances are considered carcinogens. However, it should be noted that the extent and degree to which the health effects may be experienced depend on:

Pollutant-specific characteristics (e.g., toxicity, half-life in the environment, bioaccumulation, and persistence); The ambient concentrations observed in the area (e.g., as influenced by emission

rates, meteorological conditions, and terrain); The frequency and duration of exposures; and Characteristics of exposed individuals (e.g., genetics, age, pre-existing health conditions, and lifestyle), which vary significantly within the general population.

EFFECTIVE DATE: October 30, 2003.

ADDRESSES: *Docket.* The official public docket is the collection of materials used in developing the final rule and is available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Conrad Chin, Metals Group (C439-02), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-1512, electronic mail (e-mail) address, chin.conrad@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS code ¹	Example of regulated entities
Industry	21221	Taconite Iron Ore Processing Facilities [taconite ore crushing and handling operations, indurating furnaces, finished pellet handling operations, and ore dryers].
Federal government		Not affected.
State/local/tribal government		Not affected.

¹ North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.9581 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action including both Docket ID No. OAR-2002-0039 and Docket ID No. A-2001-14. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The

official public docket is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the “Federal Register” listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA’s electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the appropriate docket identification number. Although not all docket

materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled “Docket.”

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be placed 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.

Judicial Review. This action constitutes final administrative action on the proposed NESHAP for taconite iron ore processing facilities (67 FR 77562, December 18, 2002). Under CAA section 307(b)(1), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 29, 2003. Under

CAA section 307(b)(2), the requirements that are the subject of this document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

- I. Background
- II. Summary of Final Rule
 - A. Who must comply with the final rule?
 - B. What are the affected sources and emission points?
 - C. What are the emission limitations?
 - D. What are the operation and maintenance requirements?
 - E. What are the general compliance requirements?
 - F. What are the initial compliance requirements?
 - G. What are the continuous compliance requirements?
 - H. What are the notification, recordkeeping, and reporting requirements?
 - I. What are the compliance deadlines?
- III. Summary of Responses to Major Comments
 - A. How did we revise the cost estimates and economic analysis?
 - B. How did we revise the performance testing requirements?
 - C. How did we revise the emission limitations?
 - D. How did we revise the continuous compliance requirements?
 - E. How did we revise the baseline emissions?
 - F. How did we select the pollutants?
- IV. Summary of Environmental, Energy, and Economic Impacts
 - A. What are the air emission impacts?
 - B. What are the cost impacts?
 - C. What are the economic impacts?
 - D. What are the non-air health, environmental and energy impacts?
- V. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
 - H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer Advancement Act
 - J. Congressional Review Act

I. Background

Section 112(d) of the CAA requires us (the EPA) to establish national emission standards for all categories and subcategories of major sources of HAP and for area sources listed for regulation under section 112(c). Major sources are those that emit or have the potential to emit at least 10 tons per year (tpy) of

any single HAP or at least 25 tpy of any combination of HAP. Area sources are stationary sources of HAP that are not major sources. Additional information on the NESHAP development process can be found in the preamble to the proposed rule (67 FR 77562).

We received a total of 29 comment letters on the proposed NESHAP from industry, State agencies, Federal agencies, environmental groups, and private citizens. We offered to provide interested individuals the opportunity for oral presentations of data, views, or arguments concerning the proposed rule, but a public hearing was not requested.

Today's final rule reflects our full consideration of all the comments we received. Major public comments on the proposed rule along with our responses to these comments are summarized in section III of this document. A detailed response to all the comments is included in the Background Information Document (BID) for the promulgated standards (Docket ID No. OAR-2002-0039).

II. Summary of Final Rule

A. Who Must Comply With the Final Rule?

Each owner or operator of an affected source at a taconite iron ore processing plant that is (or is part of) a major source of HAP emissions must comply with the final rule. A taconite iron ore processing plant is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

B. What Are the Affected Sources and Emission Points?

The affected sources are each new or existing ore crushing and handling operation, ore dryer, indurating furnace, and finished pellet handling operation at a taconite iron ore processing facility that is (or is part of) a major source of HAP emissions. Emission limitations apply to each ore crushing and handling operation, each ore dryer, each indurating furnace, and each finished pellet handling operation. These processes, as well as their emissions and controls, are described in the preamble to the proposed rule (67 FR 77564-77566).

C. What Are the Emission Limitations?

The final rule includes particulate matter (PM) emission limits, operating limits for control devices, and work practice standards. Particulate matter emissions serve as a surrogate measure of HAP emissions.

Ore Crushing and Handling

The PM emissions limits for ore crushing and handling are 0.008 grains per dry standard cubic foot (gr/dscf) for existing sources and 0.005 gr/dscf for new sources. Compliance with the PM emissions limits for ore crushing and handling is determined based on the flow-weighted mean concentration of emissions for all ore crushing and handling units at the plant.

Ore Dryers

The PM emission limits for each individual ore dryer are 0.052 gr/dscf for existing dryers and 0.025 gr/dscf for new dryers. Ore dryers with multiple stacks calculate their PM emissions as a flow-weighted mean concentration of PM emissions from all stacks.

Indurating Furnaces

For each straight grate indurating furnace processing magnetite, the PM emissions limits are 0.01 gr/dscf for existing straight grate furnaces and 0.006 gr/dscf for new straight grate furnaces. For each grate kiln indurating furnace processing magnetite, the PM emissions limits are 0.01 gr/dscf for existing grate kiln furnaces and 0.006 gr/dscf for new grate kiln furnaces. For each grate kiln indurating furnace processing hematite, the PM emissions limits are 0.03 gr/dscf for existing grate kiln furnaces and 0.018 gr/dscf for new grate kiln furnaces. Indurating furnaces with multiple stacks calculate their PM emissions as a flow-weighted mean concentration of PM emissions from all stacks.

Finished Pellet Handling

The PM emissions limits for finished pellet handling operations are 0.008 gr/dscf for existing sources and 0.005 gr/dscf for new sources. Compliance with the PM emissions limits for finished pellet handling is determined based on the flow-weighted mean concentration of PM emissions for all pellet handling units at the plant.

Operating Limits

For bag leak detection systems, we require that corrective actions be initiated within 1 hour of a bag leak detection system alarm. For dynamic wet scrubbers, the daily average scrubber water flow rate and either the daily average fan amperage or the daily average pressure drop must remain at or above the minimum levels established during the initial performance test. For all other wet scrubbers, the daily average pressure drop and daily average scrubber water flow rate must remain at or above the level established during the initial performance test. Plants using a

dry electrostatic precipitator (ESP) must either install and operate a continuous opacity monitoring system (COMS) or maintain the daily average secondary voltage and daily average secondary current for each field at or above the minimum levels established during the initial performance test. If demonstrating compliance using COMS, the average opacity for each 6-minute period must remain at or below the level established during the initial performance test. Plants using a wet ESP must maintain the daily average secondary voltage for each field at or above the minimum levels established during the initial performance test; maintain the daily average stack outlet temperature at or below the maximum levels established during the initial performance test; and maintain the daily average water flow rate at or above the minimum levels established during the initial performance test.

You must submit information on monitoring parameters if another type of control device is used or if alternative monitoring parameters are desired.

Work Practices

All plants subject to the final rule are required to prepare and implement a written fugitive dust emissions control plan. The plan describes in detail the measures that will be put in place to control fugitive dust emissions from the following sources at a plant, as applicable: stockpiles, material transfer points, plant roadways, tailings basin, pellet loading areas, and yard areas. Existing fugitive dust emission control plans that describe current measures to control fugitive dust emission sources that have been approved as part of a State implementation plan or title V permit would be acceptable, provided they address the prior-listed fugitive dust emission sources.

D. What Are the Operation and Maintenance Requirements?

All plants subject to the final rule must prepare and implement a written startup, shutdown, and malfunction plan according to the requirements in 40 CFR 63.6(e). A written operation and maintenance plan is also required for control devices subject to an operating limit and indurating furnaces subject to good combustion practices (GCP). This plan must describe the following: procedures for preventative maintenance requirements for control devices, corrective action requirements for baghouses and continuous parameter monitoring systems (CPMS), and GCP for indurating furnaces. In the event of a bag leak detection system alarm, the plan must include specific requirements

for initiating corrective action to determine the cause of the problem within 1 hour, initiating corrective action to fix the problem within 24 hours, and completing all corrective actions needed to fix the problem as soon as practicable. In the event you exceed an established operating limit for an air pollution control device other than a baghouse, you must initiate corrective action to determine the cause of the operating limit exceedance and complete the corrective action within 10 calendar days. Corrective action procedures you take must be consistent with the installation, operation, and maintenance procedures listed in your site-specific CPMS monitoring plan. For indurating furnaces, you must maintain a proper and efficient combustion process through the implementation of GCP.

E. What Are the General Compliance Requirements?

The final rule requires compliance with the emission limitations, work practice standards, and operation and maintenance requirements at all times, except during periods of startup, shutdown, and malfunction as defined in 40 CFR 63.2. The owner or operator must develop and implement a written startup, shutdown, and malfunction plan according to the requirements in 40 CFR 63.6(e)(3).

The final rule also requires keeping a log detailing the operation and maintenance of the process and emission control equipment. This requirement applies during the period between the compliance date and the date that continuous monitoring systems are installed and any operating limits set.

F. What Are the Initial Compliance Requirements?

The final rule requires performance tests to demonstrate that each affected source meets all applicable PM emission limits. The PM concentration (front-half filterable catch only) is to be measured using EPA Method 5, 5D, or 17 in 40 CFR part 60, appendix A. All initial compliance tests must be completed no later than 180 days following the compliance date.

To demonstrate initial compliance with the PM emission limit for the ore crushing and handling affected source, the flow-weighted mean concentration of PM emissions of all units within the affected source must not exceed the applicable PM emission limit. Similarly, for the finished pellet handling affected source, the flow-weighted mean concentration of PM emissions of all units within the affected source must

not exceed the applicable PM emission limit. In lieu of conducting performance tests for all ore crushing and handling and finished pellet handling emission units, the plant may elect to form groups of up to six similar emission units and conduct initial performance tests on a representative unit within each group. Each plant must submit a testing plan to the permitting authority for approval. The testing plan must identify the emission units that will be grouped as similar, identify the representative unit that will be tested for each group, and present the proposed schedule for testing.

To demonstrate initial compliance with the PM emission limit for each indurating furnace and each ore dryer, the flow-weighted mean concentration of PM emissions of all stacks associated with each furnace or each ore dryer must not exceed the applicable PM emission limit.

The final rule also includes procedures for establishing site-specific operating limits for control devices during the initial performance test. To demonstrate initial compliance with the work practice standards, plants must prepare, submit, and implement a fugitive dust emission control plan on or before the compliance date. To demonstrate initial compliance with the operation and maintenance requirements, plants must prepare the operation and maintenance plan and certify in their notification of compliance status that they have prepared the written plans and will operate control devices and indurating furnaces according to the procedures in the plan.

G. What Are the Continuous Compliance Requirements?

For ore crushing and handling, ore dryers, and finished pellet handling units, you must conduct subsequent performance tests to demonstrate continued compliance with the PM emission limits following the schedule established in the title V permit for each plant. If a title V permit has not been issued, you must submit a testing plan and schedule to the permitting authority for approval.

For each indurating furnace, you must conduct subsequent performance testing of all stacks based on the schedule established in each plant's title V operating permit, but no less frequently than twice per 5-year permit term. If a title V permit has not been issued, then you must submit a testing plan and schedule to the permitting authority for approval. The testing frequency in the testing plan must provide for tests to be

conducted at least twice per 5-year period.

You are required to monitor operating parameters for control devices subject to operating limits and carry out the procedures in their fugitive dust emissions control plan and their operation and maintenance plan. To demonstrate continuous compliance, you must keep records documenting compliance with the rule requirements for monitoring, the fugitive dust emissions control plan, the operation and maintenance plan, and installation, operation, and maintenance of a CPMS.

For baghouses, owners or operators are required to monitor the relative change in PM loading using a bag leak detection system and to make inspections at specified intervals. The bag leak detection system must be installed and operated according to the EPA guidance document "Fabric Filter Bag Leak Detection Guidance," EPA 454/R-98-015, September 1997. The document is available on the TTN at <http://www.epa.gov/ttnemc01/cem/tribo.pdf>. If the system does not work based on the triboelectric effect, it must be installed and operated consistent with the manufacturer's written specifications and recommendations. The basic inspection requirements include daily, weekly, monthly, or quarterly inspections of specified parameters or mechanisms with monitoring of bag cleaning cycles by an appropriate method. To demonstrate continuous compliance, the final rule requires records documenting conformance with the operation and maintenance plan, as well as the inspection and maintenance procedures.

For dynamic wet scrubbers, you must use CPMS to measure and record the daily average scrubber water flow rate and either the daily average fan amperage or the daily average pressure drop. For all other wet scrubbers, you must use CPMS to measure and record the daily average pressure drop and daily average scrubber water flow rate.

For dry ESP, you must either use a COMS to measure and record the average opacity of emissions exiting each stack of the control device for each 6-minute period, or use CPMS to measure and record the daily average secondary voltage and daily average secondary current for each field. You must operate and maintain the COMS according to the requirements in 40 CFR 63.8 and Performance Specification 1 in 40 CFR part 60, appendix B. These requirements include a quality control program including a daily calibration drift assessment, quarterly performance audit, and annual zero alignment.

For wet ESP, you must use CPMS to measure and record the daily average secondary voltage for each field, the daily average stack outlet temperature, and the daily average water flow rate.

The final rule requires you to prepare a site-specific monitoring plan for CPMS that addresses installation, performance, operation and maintenance, quality assurance, and recordkeeping and reporting procedures. These requirements replace the more detailed performance specifications contained in the proposed rule.

To demonstrate continuous compliance, you must keep records documenting compliance with the monitoring requirements (including installation, operation, and maintenance requirements for monitoring systems) and the operation and maintenance plan.

H. What Are the Notification, Recordkeeping, and Reporting Requirements?

The notification, recordkeeping, and reporting requirements are based on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 2 to subpart RRRRR of 40 CFR part 63 lists each of the requirements in the General Provisions (§§ 63.2 through 63.15) with an indication of whether they apply.

You are required to submit each initial notification required in the NESHAP General Provisions that applies to your plant. These include an initial notification of applicability with general information about the plant and notifications of performance tests and compliance status.

You are required to maintain the records required by the NESHAP General Provisions that are necessary to document compliance, such as performance test results; copies of startup, shutdown, and malfunction plans and associated corrective action records; monitoring data; and inspection records. Except for the operation and maintenance plan, the fugitive dust emissions control plan, and the testing plan, all records must be kept for a total of 5 years, with the records from the most recent 2 years kept onsite. The final rule requires that the operation and maintenance plan, the fugitive dust emissions control plan, and the testing plan, be kept onsite and available for inspection upon request for the life of the affected source or until the affected source is no longer subject to the final rule requirements.

Semiannual reports are required for any deviation from an emission limitation (including an operating limit), or operation and maintenance requirement. Each report is due no later

than 30 days after the end of the reporting period. If no deviation occurred, only a summary report is required. If a deviation did occur, more detailed information is required.

An immediate report is required if actions taken during a startup, shutdown, or malfunction are not consistent with the startup, shutdown, and malfunction plan. Deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the authority with delegation for enforcement that the source was operating in accordance with the startup, shutdown, and malfunction plan.

An immediate report is required after the third consecutive and unsuccessful attempt at corrective action for determining the cause of exceedance of an operating limit for an air pollution control device except for baghouses. The report must be submitted within 5 calendar days after the third unsuccessful attempt at corrective action. This report must notify the Administrator that a deviation has occurred and document the types of corrective measures taken to address the problem that resulted in the deviation of established operating parameters and the resulting operating limits.

You must also submit the fugitive dust emissions control plan, testing plan, and all operation and maintenance plans to the Administrator on or before the applicable compliance date.

I. What Are the Compliance Deadlines?

The owner or operator of an existing affected source must comply by October 30, 2006. An existing affected source is one constructed or reconstructed before December 18, 2002. New or reconstructed sources that startup on or before October 30, 2003 must comply by October 30, 2003. New or reconstructed sources that startup after October 30, 2003 must comply upon initial startup.

III. Summary of Responses to Major Comments

A. How Did We Revise the Cost Estimates and Economic Analysis?

Comment: Three commenters stated that the estimated total capital cost impact of \$47.3 million underestimates the cost to the industry. One of the commenters stated that the costs for their plant were underestimated.

Response: The capital equipment costs used in the cost analysis conducted prior to proposal were based largely on historical industry costs provided by industry and vendor estimates obtained by the EPA. All of

the indurating furnace capital equipment replacement costs were based on equipment and installation costs incurred by Minntac in 1991 to install two new venturi scrubbers for furnace lines 4 and 5. For ore crushing and handling and pellet handling units, the capital equipment replacement costs were based on equipment costs obtained from two wet scrubber vendors.

In follow-up discussions with the industry, industry representatives indicated that the costs of purchasing and installing a new wet scrubber were underestimated. For example, based on the cost estimates provided by one plant, the installation of two new wet scrubbers on their furnace would cost \$18 million, not the \$9.4 million estimated by EPA. We asked each plant to provide an estimate of the cost impact the limits in the final rule will have on their plant. Overall, industry estimated a capital equipment and installation cost of \$57 million. The costs provided by industry are based on a combination of costs estimated by plant engineers, previous equipment replacement costs, and vendor cost estimates.

The EPA asserts that the impact estimate of \$57 million provided by the industry is a conservatively high estimate based on the fact that some plants did not account for the averaging of the emissions for those units within the ore crushing and handling and finished pellet handling affected sources. However, in order to ensure that we fully account for the cost impact to the industry, we used the conservatively high estimates provided by the industry. Therefore, the capital cost impact of the emission limits in the final rule was estimated to be approximately \$57 million, including emission control capital costs and monitoring, recordkeeping, and reporting (MRR) capital costs. The annual costs of the final rule are estimated to be \$9 million per year, including annualized capital and annual operational and MRR costs. For more information on the industry provided costs and the revised cost analysis, see the revised cost analysis memorandum in the docket.

Comment: Two commenters stated that the costs of the rule as proposed are disproportionate to the reduction in HAP.

Response: The revised estimate of annual compliance costs for the final rule is \$9 million per year, and this expenditure is estimated to result in the reduction of 270 tpy of HAP and 10,538 tpy of PM. The corresponding cost per ton of HAP reduced is \$33,333; the corresponding cost per ton of PM reduced is \$854. These values are

similar to or lower than those in other MACT standards. In addition, the emission limits in the final rule are based on the MACT floor level of control. The CAA does not give the EPA the discretion to consider costs for the MACT floor level of control.

Comment: One commenter stated that the costs and resources associated with the administrative requirements (e.g., continuous monitoring, stack testing) of the final rule will pose a significant additional burden on their operations. The commenter cited estimated costs of \$515,000 for the installation of additional instrumentation and monitoring equipment, an additional cost of \$100,000 for dust collector monitoring maintenance, and an additional cost of \$45,000 for stack testing. The commenter stated that their plant is already operating under a title V permit and already has a well-controlled dust control system in place. The commenter asserted that the increased continuous monitoring and increased stack testing is not necessary to protect human health or the environment and adds unnecessary costs.

Response: In the proposed rule, we included only those monitoring and testing requirements that were necessary to ensure the continued compliance with the PM emission limits. However, following a review of the public comments and follow-up discussions with the industry and States, we have written the final rule to reduce the monitoring and testing burden:

- To reduce the monitoring burden, we have deleted the requirements to conduct monthly transducer checks, quarterly gauge calibration checks, semiannual flow sensor calibration checks, daily pressure tap pluggage checks, and monthly electrical connection continuity checks.
- We have reduced the indurating furnace stack testing burden by removing the requirement to conduct simultaneous tests of all the stacks on one furnace. The final rule allows plants to conduct sequential testing of the stacks for a furnace, provided the tests are completed "within a reasonable period of time, such that the indurating furnace operating characteristics remain representative for the duration of the stack tests."
- We have removed the volumetric flow rate and process throughput rate criteria for grouping similar ore crushing and handling and pellet handling emission units. This will allow more of these emission units to be grouped together, and thus, will result in fewer initial compliance tests being required for them.

- For dry ESP, we have allowed plants to monitor daily average secondary voltage and daily average secondary current in lieu of using a COMS.

Comment: According to one commenter, it is confusing that in one section of the Economic Impact Assessment (EIA), the Agency concludes that the final rule alone is unlikely to lead to mine closure, but clearly states that it's possible that two or three firms may close or sell some or all of their operations. The only consistent statement in the EIA, according to the commenter, is that the proposed rule will add to existing financial stresses in the industry.

Response: The empirical literature on steel mill capacity and closure suggests that import and mini-mill competition are more important explanatory variables for capacity and closure decisions than are pollution abatement cost expenditures. The EPA's market and facility impact analysis did not explicitly model mine closure decisions because of limited mine-level data and because the costs of compliance are relatively small. The EPA's data indicate that the compliance costs alone are generally too low to result in facility closure. However, we recognized that several companies that owned taconite mines in 2000 were already under significant financial hardship; four firms experienced operating losses in 2000, and several were also operating under Chapter 11 protection. As a result, EPA collected financial data and considered several criteria to determine whether companies would be able to obtain financing for capital investments associated with compliance, or might have to close or sell individual mine operations. The EPA examined the following company financial data:

- Change in profits projected by the economic model;
- Altman Z-scores;
- Current ratios; and
- Recent environmental compliance expenditures.

Based on our review, EPA concluded that two or three companies may close or sell operations. A review of recent data from the U.S. Geological Survey (USGS) and company financial reports confirms this pattern. In 2001, financially-strapped steel companies sold assets. Cleveland-Cliffs raised its total ownership of Tilden mine to 85 percent by acquiring an additional 45 percent share from Algoma Steel Inc. Cleveland-Cliffs and Minnesota Power purchased LTV Steel Co. in late 2001. Cleveland-Cliffs then acquired all the mining and processing facilities, including 25 percent share of the

Empire mine. In the face of continuing financial pressures from mini-mills and imports, steel companies may close or sell taconite facilities if they cannot obtain financing for compliance. A USGS iron ore expert contacted by EPA, however, stated that 2002 financial and market conditions were somewhat better than 2001. This was confirmed by reviewing financial statements for these firms; while still experiencing difficult conditions, in 2002 conditions improved somewhat compared to 2001.

Comment: One commenter from National Steel stated that it will likely be forced to shut down because it will be unable to make the upgrades necessary to comply with the rule as proposed. National currently employs nearly 500 people. The rule as proposed is anticipated to put these people out of work for a reduction of less than 5 tons of HAP. In addition to the anticipated closure of National's operations, the EPA analysis concluded that another one or two taconite ore processing plants may also close.

Response: As noted in the previous response, EPA's analysis suggests that the costs of achieving compliance are not sufficient alone to result in taconite plants becoming unprofitable. However, EPA recognizes that there are long-standing trends in the industry, such as increased imports of iron and steel and increasing use of mini-mill technology, that have resulted in decreasing demand for U.S.-produced taconite pellets over time. Due to these trends, four companies owning taconite facilities were unprofitable in 2000, and three of them (including National Steel) were operating under the protection of Chapter 11 of the bankruptcy code. The EPA's analysis recognizes that firms that are unprofitable or in bankruptcy may have difficulty obtaining financing for the capital investments needed to comply. Such firms may choose to sell or shut down their taconite plants. The EPA does not feel that such a decision should be entirely attributed to the final rule. However, note that recent industry data seem to show that in 2002, prices and profits improved somewhat due in part to the decrease in taconite supply (due in part to LTV's closing of the Hoyt Lakes facility) and in part due to tariff protection of several steel products.

Comment: According to one commenter, the statement in the EIA that two or three mines may close implies that Minnesota would see an additional loss of approximately 900 direct employees and \$20 million in local taxes. The loss of 900 jobs equates to \$67.5 million in wages and benefits. These figures represent a realistic social impact and create a different scenario

than the one represented by the EPA in the EIA. These economic impacts will be "devastating" to an area heavily dependent on the mining industry.

Response: Chapter 4 of the EIA contains a regional impact analysis carried out by EPA. The analysis is carried out using IMPLAN, a regional-level input-output model. The total direct impact on each region (a State in this analysis) is defined in the EIA as the change in local expenditures resulting from final rule implementation. The direct impact of the final rule is estimated based on the results of the market model, and includes expenditures for compliance (in this case, positive) and adjustments in outputs in response to price changes (in this case, negative or positive). Generally, the direct impact includes the net effect of reduction in local spending because of output declines and the increase in local spending to implement the controls. For the State of Minnesota, the EIA shows a net reduction in local spending of \$2.7 million. This is due to a loss of government revenues since a portion of state revenues comes from taxes on the total production from taconite iron ore. With the value of changes in total output included, the total impact to Minnesota is a reduction of \$3.9 million in local spending.

Minnesota is estimated to experience a reduction of 30 full-time employees as a result of the reduction in taconite production. Thus, EPA estimates do show a reduction in local spending and employment in Minnesota from final rule implementation, but not anywhere close to the amounts asserted by the commenter.

A separate financial assessment examined the financial condition of companies that own taconite facilities. Because of long-standing trends in the iron and steel industry (including increasing use of electric arc furnace mini-mill technology and increasing imports of iron and steel), several of the owner companies have experienced financial stress, and three are operating under Chapter 11 protection. For these reasons, EPA concluded that at least those three firms may have some difficulty obtaining the financing needed to make capital equipment investments at their plants, including investments associated with environmental compliance. The EPA stated that as many as two or three additional taconite facilities were in danger of closing or selling their taconite plants at the time of the analysis, due mainly to factors unrelated to the rule as proposed. However, the additional costs associated with the

final rule will put additional stress on these already stressed companies. Recent USGS data indicate that in 2001, financially-strapped taconite firms did sell assets to Cleveland Cliffs. Since the original EIA, however, conditions have improved somewhat in the industry. The reduced output due to the closure of Hoyt Lakes, and the tariff, which has increased the effective price of imported iron and steel commodities, have resulted in increased prices and profits for iron and steel companies over the past year. Thus, the companies are somewhat less vulnerable than they were at the time of EPA's earlier analysis.

B. How Did We Revise the Performance Testing Requirements?

Comment: Two commenters stated that language should be included in the final rule either authorizing some discretion on behalf of State agencies or otherwise allowing testing completed between the promulgation date and the compliance date to be counted as initial compliance testing. The commenters stated that this will allow additional time to spread out the compliance testing requirements.

Response: At proposal, plants were given 2 years after the compliance date to conduct their initial compliance tests for ore crushing and handling and pellet handling units, and 180 days after the compliance date to conduct their initial compliance tests for indurating furnaces. However, since the time of proposal, EPA has determined that allowing more than 180 days for initial compliance is not consistent with the 40 CFR part 63 General Provisions. Therefore, we have written the initial compliance testing deadline for ore crushing and handling and pellet handling units at 180 days after the compliance date.

More than 180 days are needed to conduct compliance testing and to reduce the burden of the final rule on the industry. Therefore, the EPA has written the final rule to allow source tests conducted between the promulgation date and the compliance date to be used for compliance demonstration, as long as the tests are performed in accordance with the requirements of the final rule. Since the compliance period is 3 years, plants will have a total of 3½ years to conduct the initial compliance tests for all of their units.

Comment: Two commenters supported the part of the proposed standard that allows plants to conduct initial performance tests by testing a representative sample of units within a group of similar units. However, in a

redline/strike-out version of the proposed rule submitted by the commenters, they removed the specific criteria defining similar units in § 63.9620(f) and the criteria indicating the number of units that must be tested per similar group in § 63.9620(g). In the place of these specific criteria, the commenters inserted a statement that refers to criteria established by the State agency or in the title V permit.

Response: In follow-up discussions with the commenters, EPA asked the commenters to clarify their specific concerns regarding the criteria for the testing of representative units. The commenters indicated that their primary concern was with the criteria in paragraphs (3) and (4) of § 63.9620(f), which require the volumetric flow rates of the emission units to be within plus or minus 10 percent of the representative emission unit, and the actual process throughput rate to be within plus or minus 10 percent of the representative emission unit. The commenters stated that these criteria were so restrictive that they would not be able to group very many units.

The EPA also conducted follow-up discussions with the Minnesota Pollution Control Agency (MPCA) regarding the criteria they use for grouping similar units. The MPCA staff indicated that the primary reason they group emission units is to reduce the number of permitted emission units, although the same groupings are used for testing purposes. The grouping of emission units by MPCA was conducted primarily on the basis of control type, installation date, and, to a certain degree, process type. However, in some cases they do group emission units from different processes. They do not group emission units on the basis of flow rate or process throughput.

Based on these discussions with the commenter and MPCA, EPA has determined that the criteria in § 63.9620(f)(3) and (4) are too restrictive and, therefore, do not achieve EPA's true intent—the reduction of the initial compliance test burden for ore crushing and handling and pellet handling emission units. As a result, EPA has not included the criteria in § 63.9620(f)(3) and (4) as proposed. The criteria in § 63.9620(f)(1) and (2) as proposed have been retained in the final rule. In addition, we have included the following new criteria: The representative unit must have parametric monitoring values that encompass the characteristics of all the emission units within the group.

Comment: Three commenters stated that the simultaneous testing of multiple indurating furnace stacks is costly. Two

of the commenters stated that simultaneous testing is also impractical and possibly not even feasible.

Response: In follow-up discussions with the commenters, they stressed that some furnaces have as many as five stacks. In order to test these stacks simultaneously, they would need to have five source testing teams on site at the same time. The commenters stated that this would be very expensive. The commenters stated that for their current title V permits, they are not required to conduct simultaneous tests of all stacks for a furnace. In our discussions with MPCA, they confirmed that, although they require all plants with permits to test all furnace stacks, they do not require that the plants test all the stacks on a furnace simultaneously. Also, in these discussions, it was noted that the operating conditions are consistent enough that emissions should not vary significantly over a short period of time. Based on these discussions, EPA agrees that the simultaneous testing of indurating furnace stacks would be costly and would provide no additional compliance assurance. Therefore, in order to reduce the source testing burden of the final rule on the industry and to maintain consistency with current testing requirements, EPA has not included the requirement for simultaneous testing in the final rule.

Comment: Two commenters stated that any requirements for sample volume or sample time should be removed from the initial and continuous compliance testing requirements. The commenters stated that the final rule should not include provisions that are different from already established EPA test methods.

Response: In the proposed rule, we specified a minimum sample volume of 60 dscf for EPA Method 5 (40 CFR part 60, Appendix A) tests to ensure that enough PM is collected to provide accurate results. The EPA Method 5 does not contain specifications for sample volume or sample time (*i.e.*, sampling duration). Therefore, it is not uncommon for the EPA to specify a minimum sample volume or sample time corresponding to emission characteristics of an industry for EPA Method 5 tests. For example, the Integrated Iron and Steel NESHAP specifies a minimum sample volume (60 dscf) for EPA Method 5 tests.

Based on historical Method 5 tests from taconite plants, most 1-hour tests sampled about 30 to 50 dscf and obtained a dry catch of 2 to 20 milligrams (mg). The EPA's Emissions Measurement and Assessment Division recommends a dry particulate catch of approximately 20 mg for an accurate

Method 5 test. At the same historical particulate concentrations, a sample volume of 60 dscf or a test of 2 hours in duration will obtain a dry catch of approximately 20 to 30 mg. In the proposed rule, we specified a minimum sample volume of at least 60 dscf for each run of a Method 5 test to ensure that an adequate amount of dry catch is obtained. However, since proposal we have determined that specifying a 2-hour sampling time will provide a greater assurance that an adequate catch is obtained. For example, with a sample volume of 60 dscf, a 20-mg dry catch is obtained for units with emissions of 0.005 gr/dscf or greater. By comparison, given the typical sampling rates of 0.75 to 1 dscf per minute from the historical tests, specifying a 2-hour test provides a 20-mg dry catch for units with emissions as low as 0.003 gr/dscf. In addition, specifying the sampling time is consistent with other recently published rules, such as the Portland Cement NESHAP. Therefore, we have modified the testing requirements in the final rule by removing the requirement for a sample volume of 60 dscf and adding the requirement that the duration of each test run be at least 2 hours.

C. How Did We Revise the Emission Limitations?

Comment: Two commenters stated that the emission limits should be set at two significant figures and not three significant figures. The commenters asserted that using three significant figures implies more precision than exists in reality and establishes limits that are unrealistically stringent and that do not allow for natural variations.

Response: In the proposed rule, we numerically expressed the emission limits for all affected sources, new and existing, to three digits (*e.g.*, 0.011 gr/dscf, 0.025 gr/dscf, and 0.008 gr/dscf). Thus, the proposed emission limits were already expressed as one or two significant figures. However, the intent of the commenters is for the EPA to consider rounding the proposed emission limits to two digits to account for normal variability in the taconite iron ore processing operations, performance of air pollution control equipment, and source testing procedures.

We have reevaluated how natural variations were accounted for in the proposed emission limits for existing sources. The PM emission limits for existing sources in the ore crushing and handling affected source and the finished pellet handling affected source remain at 0.008 gr/dscf. In the final rule, you have the option to determine an

overall, flow-weighted average PM concentration for all emission units within each of these two affected sources. One purpose for the flow-weighted average PM concentration procedure is to account for natural variability in the various types of emission units within each affected source, the processing operations, the performance of air pollution control equipment, and source testing procedures.

The PM emission limits for existing sources in the indurating furnace affected source will be rounded to two digits. For both existing straight grate and grate kiln indurating furnaces processing magnetite, the PM emission limit is 0.01 gr/dscf. For existing grate kiln indurating furnaces processing hematite, the PM emission limit is 0.03 gr/dscf. After we considered the amount of PM source test data available in establishing the MACT floor, observed variability in measured PM concentrations from the furnace exhaust stacks, and noted fluctuations in the taconite iron ore process, we determined that it is appropriate to round the PM emission limits for existing indurating furnaces to two decimal places in order to fully account for natural variability. Even after rounding the PM emission limits for existing indurating furnaces, we will still achieve nearly the same level of emission reduction, while offering increased flexibility to the industry to comply with the emission standards of the final rule.

The PM emission limit for existing ore dryers was determined to be the level of control indicated by the existing State limit of 0.052 gr/dscf. Therefore, it is not appropriate to round the PM emission limit for existing ore dryers. The PM emission limit for existing ore dryers is 0.052 gr/dscf in the final rule.

The PM emission limits for all new affected sources represent an actual performance level achieved by the best performing source in each affected source. Thus, the new source emission limits can be achieved through the proper design and construction/reconstruction of a new affected source.

Comment: Three commenters stated that the final rule should more clearly describe how to calculate the flow-weighted mean PM emissions concentration for the material handling operations.

Response: We agree with the commenters and have written §§ 63.9621 and 63.9622 to provide additional clarification for calculating the flow-weighted mean PM emissions concentration for ore crushing and handling and finished pellet handling.

Specifically, the final rule clarifies that when calculating the flow-weighted mean PM emissions for ore crushing and handling and finished pellet handling, the “average” PM concentration corresponding to each emission unit in an affected source is multiplied by the maximum design volumetric flow rate of the corresponding emission unit. The “average” PM concentration from an emission unit is derived as the arithmetic mean of a PM source test comprised of three valid sampling runs on the emission unit. If the affected source elects to conduct representative compliance testing for a group of similar emission units, the PM concentration determined for the tested emission unit will be assigned to the other emission units identified as similar within the group.

D. How Did We Revise the Continuous Compliance Requirements?

Operating Limits

Comment: Two commenters objected to using operating limits established during the performance test to determine continuous compliance. The commenters stated that a performance test is only a snapshot of an operation at a point in time and may not encompass the full operational variability that occurs. The commenters stated that this approach effectively sets a new more stringent NESHAP emission limit at the emissions level actually emitted during the performance test. Therefore, the commenters stated that any operation outside of the operating parameter range should not be classified as a deviation. The commenters stated that the D.C. Circuit Court has made it clear that MACT standards are to represent the best performing source on its worst day (see *National Lime v. EPA*, 233 F.3d 625, 51 ERC 1737 (D.C. Cir. 2000), and *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855, 52 ERC 1865 (D.C. Cir. 2001)). The commenters asserted that as long as a source is operating properly, follows procedures in the malfunction plan, and proceeds appropriately to corrective action, then variations within the range of proper operation should not constitute deviations. The commenters stated that the EPA may require plants to log such information and even report it, but not necessarily as a deviation under title V.

Response: In follow-up discussions with the industry, we were able to determine that the taconite industry’s primary concern regarding the operating limits was being able to maintain the equipment so that they did not exceed the established operating limit.

Specifically, their concerns included their ability to maintain the pressure drop above the operating limit for venturi-rod deck units with a fixed throat and/or a volumetric flow dependent of process conditions; and, their ability to operate and obtain meaningful readings of opacity from dry ESP using a COMS in conditions of high moisture and low opacity.

Regarding the measurement of the pressure drop, we have increased the averaging time from hourly to daily. The daily averaging period addresses industry’s concerns about their ability to control pressure drop during short periods of time when the scrubber may experience a pressure drop lower than the operating limit. In addition, for dynamic wet scrubbers, we have provided the flexibility of monitoring either the daily average pressure drop or the daily average fan amperage, in addition to the daily average scrubber water flow rate. This addresses industry’s concern that for dynamic wet scrubbers, both pressure drop and fan amperage are good indicators of proper performance.

Regarding the measurement of opacity using COMS, we have verified with equipment vendors that COMS are available that will provide accurate readings under the moisture and low opacity conditions present at taconite facilities. However, we understand that currently there are no COMS in operation at taconite plants and that due to costs or site-specific operating conditions a COMS may not be the best option. Therefore, in the final rule we have provided plants the flexibility to establish their operating limit either as the 6-minute average opacity or as the daily average secondary voltage and the daily average secondary current for each field.

In addition, we have included language in the final rule to clarify when not meeting an operating limit becomes an exceedance. Specifically, after the first two times that you do not meet the operating limit, you must take corrective action. After the third time that you do not meet the operating limit, you must submit a written report within 5 calendar days and report the third unsuccessful attempt of corrective action as a deviation and continue corrective action.

Bag Leak Detection Systems

Comment: Two commenters stated that the requirement in § 63.9634(d)(1) of the proposed rule that requires that the bag leak detection system not alarm for more than 5 percent of the time should be deleted from the final rule.

Two commenters pointed out that § 63.7833(d)(1)(iii) of the proposed rule specifies that 1 hour of alarm be logged even if procedures are implemented to determine the cause of the alarm and corrective action is taken in less than 1 hour. The commenters contended that the requirement artificially and unfairly inflates the semiannual percentage of alarm time and does not provide an incentive for sources to initiate procedures as quickly as may be possible. The commenters suggested that the final rule should require the plant to “count the actual amount of time it took to initiate procedures to determine the cause of the alarm.”

Three commenters stated that in the requirement in § 63.9634(d)(1)(v) that the bag leak detection system not alarm for more than 5 percent of the “total operating time,” it is unclear if the “total operating time” refers to the operating time of the affected source or the time the baghouse is actually evacuating emissions generated by the affected source. The commenters pointed out that some baghouses, by design, evacuate emissions for only a few minutes each hour. The commenters recommended that EPA clarify its intent that the “total operating time” refers to the total operating time of the affected source.

Response: We agree with the commenters and have not included the 5 percent operating limit requirement for baghouse leak detectors in § 63.9634(d)(1) of the final rule. As a result, the requirements to log alarm time and to determine the ratio of the sum of the alarm times to the total operating time have also not been included. However, it is important that corrective action be initiated promptly, so we are retaining the requirement in § 63.9600(b)(2) that you “initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable.”

Wet Scrubber CPMS

Comment: Three commenters stated that the labor hours required for the monthly transducer checks and the quarterly gauge calibration checks for the pressure drop sensor (§ 63.9632(b)(1)(iv)), and the semiannual flow sensor calibration checks (§ 63.9632(b)(2)(iii)) are excessive compared to the potential emissions control improvement. Two of the commenters suggested that rather than mandatory monthly, quarterly, or semiannual calibration checks, any control unit which emits less than 5

percent of the total annual PM emissions at the plant should be allowed to reduce the periodic checks required by each of the cited provisions to once annually. The other commenter suggested that the EPA should allow each source to propose an alternative method to the proposed calibration checks to the appropriate permitting agency.

Three commenters stated that the daily pressure tap pluggage check (§ 63.9632(b)(1)(iii)) and monthly electrical connection continuity checks (§ 63.9632(b)(1)(vi)) are overly burdensome and costly to implement. The commenters argued that the manual labor and clock hours required for such continuity checks would be so large that the monitoring systems would have to be shut down so frequently and for such a length of time that they would have virtually no operating time. According to the commenters, these provisions should be modified so as to provide “a program within the CPMS to alarm the process unit operator and to record the alarm for a zero value indication and for a static value indication that satisfies the requirement of this provision.” In addition, one commenter stated that, if no change is made, the labor costs for the continuity checks must be factored into the economic analysis.

Response: The specific installation, operation, and maintenance requirements for wet scrubber CPMS have not been included in the final rule. Therefore, the requirements for monthly transducer checks, quarterly gauge calibration checks, semiannual flow sensor calibration checks, daily pressure tap pluggage checks, and monthly electrical connector continuity checks have not been included in the final rule. In place of the specific requirements, we have included the requirement that, for each CPMS, you must develop and make available a site-specific monitoring plan that addresses the following:

- Installation of CPMS sampling probe so that measurement is representative of control of the exhaust emissions.
- Performance and equipment specifications for the sample interface, the parametric signal analyzer, and the data collection and reduction system.
- Performance evaluation procedures and acceptance criteria (e.g., calibrations).
- Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (3), (4)(ii), (7), and (8).
- Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d).

- Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

Comment: Three commenters stated that it is inappropriate to set a single (pressure drop) point for operating wet scrubbers and recommended that EPA remove the pressure drop requirement and rely on the operation and maintenance plan for compliance. The commenters pointed out that venturi-rod deck scrubbers operate over a range of pressure drop that is affected by scrubbing water flow rate, scrubber water flow distribution, water temperature, gas temperature, and the square of the process gas flow rate. The commenters stated that operators cannot directly control the pressure drop in a venturi-rod deck scrubber. By setting the average pressure drop at the minimum level established during the performance test, the commenters stated that the rule effectively forces a source to operate well below the emission limit.

Response: In follow-up discussions with the commenters, it was clarified that their comments referred only to venturi-rod deck scrubbers installed on indurating furnaces. These venturi-rod deck scrubbers are fixed-throat scrubbers for which the pressure drop can be measured, but not directly controlled. Two commenters stated that they cannot directly control the pressure drop across the venturi-rod deck scrubbers because of the following factors:

- The scrubbers are of a fixed-throat design;
- The fan drawing or pushing air through the scrubber operates at a fixed speed and fixed diameter; and
- The damper prior to the scrubber is used to control the overall flow of air through the system; therefore, it cannot be used to control the pressure drop to the scrubber without affecting the entire process. The damper is opened more or closed more, as necessary, to modulate the air flow as changes occur in the process. As production rate increases, the damper is opened more and, therefore, the pressure drop across the scrubber increases. Due to these factors, the pressure drop across the venturi-rod deck scrubbers on the furnaces is more variable than other controls and is difficult to regulate.

The commenters presented data showing the variability of the pressure drop for their venturi-rod deck scrubbers. One commenter presented pressure drop readings taken every 20 minutes that ranged from 12 to 4 inches of pressure drop, with very few points below 4 inches of pressure drop.

However, after excluding periods of malfunction and looking at the daily average pressure drop instead of instantaneous readings, the data showed that the daily average pressure drop for each scrubber fell within a narrow range. The difference between the lowest daily average pressure drop and the highest daily average pressure drop was only about 2 or 3 inches of pressure drop. Based on these data, the commenter stated that they were confident that they could maintain a pressure drop at or above the operating limit based on a daily average.

The other commenter provided daily average pressure drop for their venturi-rod deck scrubbers. The data showed that on a daily average basis, the pressure drop for each venturi-rod deck scrubber varied by 1 to 3.6 inches over a period of 2 months. The commenter requested that they be allowed to use historical pressure drop data to establish the pressure drop operating limit for venturi-rod deck scrubbers on indurating furnaces. In addition, the commenter requested that compliance with the pressure drop operating limit for venturi-rod deck scrubbers on indurating furnaces be determined on a daily average basis.

To address the technical issues raised by the commenters, we have written the final rule to allow the use of pressure drop data from PM tests conducted on or after December 18, 2002 (the proposal date) to establish the operating limit for venturi-rod deck scrubbers controlling emissions from indurating furnaces. The historical pressure drop data must be from a certified test for which the PM emission concentration was at or below the applicable indurating furnace limit in Table 1 to the final rule. In addition, the basis for compliance with the pressure drop operating limit for venturi-rod deck scrubbers on indurating furnaces has been written as an hourly average not a daily average.

COMS

Comment: Two commenters stated that there should not be any requirement to install or operate a COMS. The commenters do not support setting an opacity limit on a case-by-case and site-by-site basis. In addition, the commenters asserted that the opacity will be low enough to be outside of the range of error for the test method (the COMS), and sources could create a reportable deviation without truly exceeding the actual opacity limit. Instead, the commenters stated that there should be a requirement for a visible emission check, as is required in the Portland Cement NESHAP.

Response: We have verified with equipment vendors that COMS are available that will provide accurate readings at low opacity conditions. Certain models of COMS can measure opacity as low as 0.1 percent with an accuracy of ± 0.3 percent. In addition, the COMS vendors indicated that the COMS will provide accurate readings under the moisture conditions present at taconite facilities (typically 9 percent moisture). However, we understand that currently there are no COMS in operation at taconite plants (one facility has scheduled a trial installation for later this year) and that due to equipment and installation costs or site-specific operating conditions, a COMS may not be the best option for each plant. Therefore, in the final rule we have provided two options for the operating limits for dry ESP: the 6-minute average opacity, as monitored using a COMS; or the daily average secondary voltage and the daily average secondary current for each field, as monitored using a CPMS.

During our dry ESP discussions with industry, it was requested that we add specific monitoring requirements for wet ESP. After discussion with the industry and State agencies, we established the following monitoring parameters for wet ESP:

- Daily average secondary voltage for each field;
- Daily average stack outlet temperature; and
- Daily average water flow rate.

Therefore, the final rule contains requirements to establish operating limits for these parameters during the initial performance test. Plants must also monitor these parameters such that they are maintained at or above the operating limits (for secondary voltage and water flow rate), or below the operating limits (for stack outlet temperature).

E. How Did We Revise the Baseline Emissions?

Comment: Two commenters stated that the HAP emission values in the preamble need to be updated to accurately reflect what is currently being emitted. Specifically, one of the commenters stated that U.S. Steel has more recent testing data that can be used to update the estimates. Another one of the commenters asserted that HAP emissions from taconite ore plants are inaccurately characterized. The commenter stated that several companies have more recent test data and EPA can revise the HAP emissions accordingly. The commenter stated that a more accurate depiction of the

emissions will alter the economic analysis.

Response: In follow-up discussions with the industry, we asked them to submit any test data that were not reflected in the proposal analyses. We received the following additional emission tests:

- Engineering Emissions Test Report for Tilden conducted the week of November 4, 1999. Tested PM, nitrogen oxides (NO_x), HCl, HF, benzene, hexane, toluene, formaldehyde, metals, and asbestos.
- Particulate and Metals Emission Study for Tilden conducted May 7 to 11, 2002. Tested total PM and metals.
- MPCA spreadsheet incorporating Minntac emissions tests for December 2002 and August 2001. Tested formaldehyde, HCl, HF, chlorine, and fluorine.
- Northshore formaldehyde emissions tests conducted on March 6, 2003. We have reviewed the test data listed above and have revised the baseline HAP emissions as appropriate. The baseline HAP emissions have been modified as follows:
 - Baseline formaldehyde emissions were updated for Minntac, Northshore, and Tilden. The baseline formaldehyde emissions for EVTAC and Inland were also updated, since their formaldehyde emission factors were based on Northshore estimates. This resulted in a decrease in baseline formaldehyde emissions from 180.7 to 30.1 tpy. This had no effect on the HAP emission reduction estimate since we assumed that there would be no formaldehyde emission reductions.
 - Baseline HCl and HF emissions were updated for Minntac and Tilden. This resulted in a decrease in baseline HCl emissions from 349.1 to 274 tpy and a decrease in baseline HF emissions from 308 to 229 tpy. As a result, the emission reduction from acid gases decreased from 356.1 to 256 tpy.

F. How Did We Select the Pollutants?

Mercury

Comment: Seventeen commenters stated that EPA has a statutory obligation to set emission standards for mercury. Several commenters specifically cited *National Lime*. One commenter stated that the fact that no specific type of control technology has yet proven effective and affordable for taconite processing cannot legally excuse the industry from regulation. Thirteen commenters asserted that EPA's practice of not setting standards for industries that do not yet control their emissions is illegal and encourages the industry to do as little as possible to control mercury.

One commenter encouraged EPA to consult with the Minnesota Department of Natural Resources, Division of Lands and Minerals, to get the most up-to-date information on potential mercury control strategies for taconite facilities before promulgation. The commenter stated that viable mercury control technologies or strategies may be identified in the very near future. The commenter asserted that the best strategies to control mercury may be operational modifications such as different handling practices for captured dust from indurating furnaces.

Two commenters stated that the EPA must set an emission standard for mercury based on the statute's "minimum stringency requirement" (*i.e.*, the MACT floor) even if specific technologies or operating practices to achieve it have not been identified. One commenter stated that if no such controls or practices are being used, EPA must find some other factor on which to base the standard. Three commenters suggested that EPA determine the floor based on the average mercury emission level of the five plants (or furnaces) with the lowest emissions, and then set the mercury emission limit there. One commenter stated that if certain plants will not be able to meet such a standard within 4 years, the statute provides relief through a Presidential exemption for a period of not more than 2 years. The commenter also contends that the CAA allows relief for a company that makes a significant effort to identify and implement effective controls but is still unable to meet the standard by the 4-year deadline. The commenter stated that EPA included a similar provision in the Portland Cement NESHAP. The commenter believes that setting a standard would induce the industry to invest in research and development to meet it. The commenter stated that promising mercury control technologies for the taconite industry are on the horizon. The commenter stated that the EPA should investigate the COHPAC-TOXECON system, corona discharge, and catalytic oxidation, as well as an iron oxide sorbent system being tested in Minnesota.

One commenter stated that EPA recognized in the proposed rule that the mercury content of the taconite ore is the "key factor" affecting mercury emissions. The commenter reasoned that by setting a mercury standard, plants that use ore with high mercury content will have to find ways to reduce mercury emissions, including switching to cleaner raw materials or installing pollution controls.

One commenter stated that the final rule should consider precluding the use of coal, even as a secondary fuel, to control mercury emissions.

Thirteen commenters recommended that EPA establish a reasonable limit for mercury and allow relief for a company that is unable to meet the limit after making appropriate technological or research investments.

Two commenters requested more information supporting EPA's finding that "we were unable to find any viable control technologies or operating procedures for achieving reduction in mercury emissions from indurating furnaces at taconite iron ore plants." One of the commenters requested the cost of control per ton of mercury control that was estimated in EPA's analysis. Both commenters stated that control technologies being developed for coal-fired power plants could be used to control mercury emissions from taconite facilities. Two commenters mentioned activated carbon injection as a potential mercury control for taconite plants.

One commenter stated that, both within the binational program and in national policy documents, the EPA insinuates that the NESHAP program is the means by which the Agency will achieve mercury reduction goals. The commenter asserted that an emission limit for mercury should be set that pushes the industry to research and develop control technology but also allows for relief if a company is unable to meet the standard after diligently pursuing such technology. The standard should also include mercury monitoring requirements.

Three commenters stated that if mercury emissions from the taconite industry are not reduced, the goals of the binational program to protect the Lake Superior Basin cannot be met. One commenter stated that, if EPA does not intend to set standards for mercury emissions from industries that currently do nothing to control their emissions and that do not develop control technology on a voluntary basis, its regulations (if not its authority) are inadequate to protect the Great Lakes and other Great Waters from mercury deposition. The commenter stated that EPA's refusal to take action under CAA section 112(m) because authority is available under CAA section 112(d), and then failing to use the CAA section 112(d) authority is unacceptable. Furthermore, the commenter stated that Congress directed the EPA to take action to protect the Great Waters by 1995. The commenter stated that postponing regulations until residual risk standards

are required violates the spirit (if not the letter) of the congressional mandate.

One commenter stated that beyond-the-floor standards are warranted for mercury. The commenter stated that a mercury standard based on developing technologies is "achievable." The commenter stated that EPA could base beyond-the-floor mercury standards on the reductions that could be achieved through raw material change (low-mercury ore), fuel change (natural gas), or control technologies (wet scrubbers, carbon beds, or activated carbon injection). The commenter recommended that EPA investigate the COHPAC-TOXECON system, whereby a pulse-jet baghouse is installed downstream from existing ESP controls, and a sorbent injection system is installed between the existing ESP and the baghouse. The commenter also suggested that EPA look at developing multipollutant technologies, such as corona discharge, catalytic oxidation, and iron oxide sorbent systems being tested in Minnesota.

One commenter cited estimated costs for activated carbon systems that were developed for coal-fired boilers that ranged from \$4,940 to \$70,000 per pound (\$9.9 to \$140 million/ton) of mercury removed at 90 percent control (USDOE, September 2002; NESCAUM, June 2000). The commenter also provided costs for carbon filter beds used in European waste incinerators of \$513 to \$1,083 per pound (\$1.0 to \$2.2 million/ton) of mercury removed at 99 percent control. The commenter stated that the control costs for indurating furnaces should lie somewhere between the two cost ranges. The commenter also provided estimated costs for enhanced wet scrubbing systems for coal-fired boilers of \$76,000 to \$174,000 per pound (\$152 to \$348 million/ton) of mercury removed (NESCAUM, June 2000).

Response: There is no way to set a floor standard for mercury that is "achievable," as required by CAA section 112(d)(2), because there is no standard that can be duplicated by different sources or replicable by the same source. The opinion in *National Lime* did not deal with a situation where an emission standard was unachievable for these reasons. Mercury emitted from taconite iron ore processing plants originates primarily from the ore itself and to a much lesser extent the fuels powering the process. None of the taconite iron ore processing plants control mercury emissions by using at-the-stack controls. Thus, any differences in mercury emissions from existing indurating furnaces reflect different mercury levels in raw materials or fossil

fuels used at the individual plants. Attempting to base a mercury standard (either a floor standard, or a beyond-the-floor standard) on raw material substitution (*i.e.*, ore substitution), however, would lead to unachievable standards for all sources, because this means of control is not duplicable or even replicable.

A study by the Coleraine Minerals Research Laboratory in 1997 stated that "the mercury volatilized during pellet induration is not the same for every taconite operation. There is a correlation between the amount of mercury volatilized during induration and the location of the taconite operation. The taconite operations that are located on the west end of the Mesabi Iron Range volatilize more mercury during pellet induration than those on the east end of the range." This correlation was confirmed in a report by the Minnesota Department of Natural Resources (Berndt, 2002) with the mercury concentrations present in the ore varying from 21 parts per billion (ppb) at the west end of the range to 0.6 ppb for facilities located on the east end of the range. Each taconite iron ore processing plant is located directly proximate to its own mining source. Transportation costs of procuring raw materials from other locations are prohibitive. A plant has no access to the raw ore used by another plant and, consequently, could not duplicate the mercury emissions performance of the other plant. The ore processing operations at a given plant are dependent on the type of ore mined. The east range ores are typically finer and harder requiring different processing steps in crushing, grinding, and flotation. Because of the differences in processing for each type of ore, it is not feasible for any one facility to process different ores mined from multiple locations in the range. Moreover, because iron ore deposits are variable in mercury content, there is no way to assure that even a source processing its own ore could replicate its own performance, since the next ore batch could contain higher concentrations of mercury. Based on the above justifications, we have determined that it is infeasible for taconite plants to reduce mercury emissions by switching to "cleaner" ores.

Natural gas is the primary fuel used by the taconite industry to fuel the process. From the period of 1995 to 1997, the burning of coal constituted only between 9 and 18 percent of the overall energy input for taconite indurating furnaces. During the same period, natural gas constituted between

73 and 83 percent of the overall energy input for taconite indurating furnaces. Although very little coal is used overall by the industry, it is critical for certain plants to have coal available to them as a backup fuel when natural gas may not be available or when seasonal fluctuations in the price of natural gas make its use uneconomical. Therefore, based on the negligible impact of coal on mercury emissions in the industry and the importance of maintaining backup fuel options, fuel switching is not a feasible means of controlling HAP metal emissions (including mercury) for the taconite industry.

Based on these facts, EPA cannot accept the comment that it must establish a floor standard by averaging the lowest mercury emission values of the so-called best-performing 12 percent of sources. In the next performance test, all of these mercury values could be higher (no matter what method would be used to establish "best performing"), because there are no means of controlling ore concentrations or feasibly using fuel substitution. Such a standard simply could not be achieved by any source. Not only is this not the intent of a technology-based standard, but would result in sources being out-of-compliance and, thus, possibly shutting them down. This is not how MACT was intended to function. "MACT is not intended * * * to drive * * *" (H.R. Rep. No. 101-490, 101st Cong. 2d sess. 328).

We note further that the mercury in the ore and the fuel is present in trace amounts. The Minnesota Department of Natural Resources stated that "mercury present in taconite occurs as a trace element, and cannot be eliminated by simply using a different fuel source or by eliminating mercury-bearing components from material to be combusted." (Berndt, 2002) This supports the Agency's technical determinations that control via substitutions of feed or fuel is neither feasible nor likely to be effective since random variability in the feed will likely result in equal amounts of mercury being emitted in any case. Indeed, as stated above, it is not clear that even a single source could reliably duplicate its own performance for mercury emissions due to the small amounts emitted and random variabilities in the mercury content of the iron ore.

The commenters themselves acknowledge that viable controls for mercury are not currently available for the taconite industry:

- One commenter stated that "viable mercury control technologies or

strategies may be identified in the very near future."

- One commenter stated that "setting a standard would induce the industry to invest in research and development to meet it." The commenter also stated that "promising mercury control technologies for the taconite industry are on the horizon."

- Two commenters stated that "control technologies being developed for coal-fired plants could be used to control mercury emissions from taconite facilities." Section 112(d) of the CAA requires that the EPA establish emission standards that are "achievable for new or existing sources." Since we have not been able to identify any currently employed operating practices that effectively reduce mercury emissions which are duplicable or replicable, we cannot develop an achievable floor standard.

Some commenters also suggested extended compliance periods (beyond the 3 years provided by section 112(i)(3) of the CAA). The problem, however, is not one of time but of the lack of existence of any means of floor control. Control of emissions via raw material or fuel substitution will not be available regardless of time allowed for compliance.

Several commenters also noted that EPA's action here could undermine efforts to control mercury deposition in the Great Lakes and questioned the adequacy of EPA's action in light of the Agency's obligation under section 112(m)(6) of the CAA to "determine whether the other provisions of this section 112 are adequate to prevent serious adverse effect to public health and serious or widespread environmental effects" in the Great Lakes. The EPA, however, is not reopening its existing determination that the section 112(d) and (f) standards are adequate for this purpose. See generally 63 FR 14090 (March 24, 1998); "Deposition of Air Pollutants to the Great Waters: First Report to Congress (EPA-453/R-93-055, 1994); "Deposition of Air Pollutants to the Great Waters: Second Report to Congress" (EPA-453/R-97-011, 1997). The EPA notes further that the section 112(f) residual risk process must evaluate (among other things) whether a more stringent standard for mercury is needed to prevent an adverse environmental effect (taking into consideration costs, energy, safety and other relevant factors).

The commenters' statements regarding potential at-the-stack control options are legitimate considerations for beyond-the-floor standards, but after evaluating the possibility of such

controls against technical considerations and the section 112(d)(2) factors, we do not feel that a beyond-the-floor standard for mercury is warranted.

One commenter indicated that different handling practices for captured dust from indurating furnaces, as discussed in a report by the Minnesota Department of Natural Resources (Berndt, 2002), would be a good method for controlling mercury. The control option investigated in the report involves placing magnetite dust collected by the wet scrubbers, which was found to be high in mercury, into the waste stream rather than recycling the dust back to the indurating furnace. A review of the report cited by the commenter reveals that, for the two taconite plants studied, the costs of this approach ranged from \$28 to \$254 million per ton of mercury removed (\$14,000 to \$127,000 per pound of mercury removed). This high cost results from the loss of over \$1 million of magnetite dust product (\$25 per long ton) to prevent approximately 30 pounds of mercury emissions. The study concludes that "due to the high cost of this emission control method, the large uncertainty in the cost estimates, and the limited amount of emission reduction, it appears that more research is needed before mercury emission control methods can be put into practice in taconite processing facilities." We believe that the high cost, the small reduction in HAP emissions, and increased waste disposal do not justify this beyond-the-floor alternative at this time.

Other potential mercury controls cited by the commenters include: wet flue gas desulfurization (FGD), baghouses, activated carbon injection, activated carbon/baghouse system (COHPAC), corona discharge, electro-catalytic oxidation, and injection of copper-coated magnetic taconite concentrate.

Ninety seven percent of the mercury emitted from taconite plants is emitted from the indurating furnaces. The mercury emitted from the taconite indurating furnaces is primarily elemental mercury. Wet scrubbing systems, such as wet FGD, "are very effective at removing soluble ionic mercury, but are not very effective at removing insoluble elemental mercury" (NESCAUM, 2000). Therefore, wet FGD systems were not considered to be a technically viable beyond-the-floor option.

Baghouses and control systems that utilize them, such as the COHPAC system, cannot be used on taconite indurating furnace stacks due to the high moisture content of the exhaust

gas. The high moisture content of the exhaust gas causes plugging problems that make the baghouses ineffective. Therefore, baghouses and control systems based on baghouse technology were not considered to be a technically viable beyond-the-floor option.

In pilot scale studies at several electricity generating boilers, carbon injection has provided up to a 90 percent reduction in mercury emissions. Estimated costs for installing activated carbon injection systems on electricity generating boilers range from \$10 to \$140 million per ton of mercury removed (\$5,000 to \$70,000 per pound of mercury removed) (NESCAUM, 2000; USDOE, 2002). Activated carbon injection has been demonstrated to provide 95 percent control of mercury emissions for municipal waste combustors (NESCAUM, 2000). Costs for installing activated carbon injection for municipal waste combustors range from \$0.4 to \$1.74 million per ton of mercury reduced (\$211 to \$870 per pound of mercury reduced). However, NESCAUM points out that "this working experience with small sources is not directly transferable to large coal-fired boilers because of their different flue gas characteristics" (NESCAUM, 2000). The cost per pound of mercury removed for this industry with activated carbon injection would be considerably higher than the estimated cost for a utility boiler because the capital and fixed operating costs would be similar while these plants have very low mercury emissions. The high cost, small reduction in HAP emissions, increased energy usage, and additional waste generation do not justify this beyond-the-floor alternative at this time.

The corona discharge, electro-catalytic oxidation, and copper-coated magnetic taconite concentrate injection control technologies are describe by the commenter as "emerging technologies * * * that could potentially be applied to the taconite sector as they mature and become more cost-effective." Based on the commenter's own description, these technologies are not currently ready for application to the taconite industry. Therefore, these technologies were not considered in the beyond-the-floor analysis.

In evaluating these potential beyond-the-floor options, we were unable to identify any viable control technologies or operating practices for achieving reductions in mercury emissions from taconite iron ore plants. Consequently, we chose the floor level of no emissions reduction as MACT.

Since specific controls for mercury are not currently present in the industry and operating practices that effectively

reduce mercury emissions have not been identified, we are selecting no emissions reduction as new source MACT.

Asbestos

Comment: Seventeen commenters stated that EPA should set a limit for asbestos emissions from taconite plants as is required by the CAA. One commenter stated that asbestos is designated as a HAP by the CAA. The commenter reasoned that if asbestos is emitted by the taconite industry, the statute requires that EPA set a standard for asbestos fibers. Based on the decision in *Reserve Mining Co. v. EPA*, 514 F.2d 492, 526 (1975), the commenter contends that the EPA must consider asbestos to be a HAP emitted by the taconite industry. One commenter contended that "lack of information" about asbestos emissions is an invalid reason for not setting standards.

Two commenters asserted that 30 years ago, EPA stated that it intended to regulate asbestos emissions from the taconite industry. The same commenter stated that the 1973 asbestos NESHAP had excluded "mineral processing operations that may contain asbestos as a contaminant." The commenter further pointed out the Congress rejected this approach when it passed the CAA Amendments of 1990.

One of the commenters pointed out that in a 1975 *Reserve Mining* decision, the U.S. Court of Appeals for the Eighth Circuit stated in regard to emissions from the Co. plant (now operated by Northshore) that "Reserve discharges fibers substantially identical and in some instances identical to fibers of amosite asbestos." The trial court heard extensive evidence as to the chemistry, crystallography, and morphology of the cummingtonite-grunerite present in the mined ore. This evidence demonstrated that, at the level of the individual fiber, a portion of Reserve's cummingtonite-grunerite cannot be meaningfully distinguished from amosite asbestos. Reserve attempted to rebut this testimony by showing that the gross morphology of the two minerals differed and the characteristics of the two minerals varied when considered in crystal aggregations. Since, according to the opinions of some experts, the individual fiber probably serves as a carcinogenic agent, the district court viewed the variations in mineralogy as irrelevant and determined that Reserve discharges fibers substantially identical and in some instances identical to amosite asbestos.

One commenter stated that it should be noted in the proposal preamble that only one mine remains operating at the

eastern end of the Mesabi Range where acicular (needle-like) minerals may be present in the ore. The commenter also stated that the proposal preamble overstated the efforts of EPA's work group investigation of asbestos in taconite ore. The commenter asserted that the work group is focused mainly on vermiculite and is unlikely to study or recommend "solutions" for the taconite industry.

One commenter stated that EPA's refusal to set beyond-the-floor standards for asbestos is unlawful.

Response: Although we are compelled to develop MACT standards for HAP from major sources, and "asbestos" is listed as a HAP in section 112(b) of the CAA, "asbestos" is not a single chemical substance or an easily identified group of chemicals or substances. Our previous regulatory experience with asbestos as an air pollutant has been limited to those substances commercially used for their properties, such as a high resistance to heat and most chemicals. More recently, the Agency has become concerned with those and similar substances that may occur as a contaminant in other mined materials and then be released into the air during processing activities.

When Congress listed "asbestos" as a HAP in section 112(b)(1), it did not further explain the term in the statute, and EPA is not aware of any legislative history addressing the term asbestos. Currently, EPA regulatory definitions for "asbestos" are provided in the Asbestos NESHAP, as revised in 1990 (40 CFR 61.141, subpart M), and the regulations for addressing asbestos-containing materials in schools (40 CFR 763.83). Both rulemakings, which focus on commercial asbestos, define asbestos as the asbestiform varieties of six different minerals: chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, actinolite, and tremolite. As some commenters have indicated, it is correct that the ore from the eastern end of the Mesabi Range is comprised to some extent of cummingtonite-grunerite and ferroactinolite (an iron-based form of actinolite), two of the above listed asbestos-like minerals.

Similarly, other Federal agencies' standards for "asbestos," for example, the Occupational Safety and Health Administration (OSHA), were developed for commercial asbestos products and not asbestos as a contaminant in another material (29 CFR parts 1910, 1915, and 1926). Current OSHA workplace air regulations apply only to chrysotile, crocidolite, amosite, and the asbestiform varieties of anthophyllite, tremolite, and actinolite.

The word asbestos is often added after the mineral (e.g., tremolite asbestos) to signify that the asbestiform variety of the mineral is being referred to. This is not necessary for chrysotile, crocidolite, or amosite because these are terms specific to the asbestiform varieties of the minerals (which are serpentine, riebeckite, and cummingtonite-grunerite, respectively).

Since the EPA first regulated asbestos as a HAP, a distinction has been made on applying the term asbestos to commercially manufactured products and not as a contaminant in other materials. When the Asbestos NESHAP was promulgated in 1973, the EPA Administrator made explicit in accompanying comments that the NESHAP only apply to asbestos mines and asbestos mills. Approximately 1 year after the rule was promulgated, EPA further clarified the rule by stating it does not apply to asbestos occurring as a contaminant as distinguished from asbestos as a product (39 FR 15397, May 3, 1974). In a 1974 revision to the Asbestos NESHAP, the Administrator added a definition of "commercial asbestos" to distinguish asbestos which is produced as a product from asbestos which occurs as a contaminant in other materials.

Furthermore, when the CAA was amended in 1990, EPA's approach in developing NESHAP was significantly altered through the use of the HAP list under section 112(b) and the application of technology-based standards under section 112(d) instead of a strict risk-based approach. However, the CAA amendments in 1990 did not provide any further guidance on how the definition of asbestos could be applied beyond its use in the Asbestos NESHAP to address asbestos as a contaminant in other materials.¹ Based on EPA's historical use of the term "asbestos," it has been used in the context for commercially produced products and not, as yet, as a contaminant in other products. In summary, there is no technical or regulatory consensus on the set of minerals pertinent to contaminant asbestos.

Notwithstanding the real technical uncertainties as to how to classify the fibers in the Northshore emissions,

commenters argued that the issue had already been decided by virtue of the Eighth Circuit's *Reserve Mining* decision, which found that *Reserve Mining* (now Northshore) emitted asbestos for purposes of ordering injunctive relief. First, any suggestion that EPA is now precluded from making a different factual determination is not correct. The issue decided in *Reserve Mining* is different from the one involved here: whether the Northshore fibers are "asbestos" for purposes of section 112 (b) of the CAA, a provision not at issue in *Reserve Mining* since it did not even exist at the time of the decision.

Second, EPA is not acting in the context of a plea for general injunctive relief (as in *Reserve Mining*), but rather to implement a limited grant of statutory authority to regulate the HAP "asbestos." We have looked for existing, objective means of determining if Northshore's fibers are "asbestos" and currently find the situation uncertain. In light of this uncertainty, we are not establishing MACT standards for the fibers emitted by Northshore. Rather, the issue of which non-commercial fibers are "asbestos" for purposes of section 112(b) is one that must first be decided in a broader context.

In response to the events surrounding exposures of residents to asbestos that occurred as a contaminant in a vermiculite mine in Libby, Montana, EPA is currently studying the complex issues involved with asbestos emissions from beneficiation and subsequent processing of minerals where asbestos may be present as a contaminant. One component of this activity is a comprehensive update to the asbestos entry in the Agency's Integrated Risk Information System (IRIS). In the hazard and dose-response assessment pieces of the update, the current information on mineralogy, size, bioactivity and chemistry of different asbestos fibers is being considered. Within the past 3 years, the Agency has sponsored or co-sponsored several technical meetings aimed at bringing together the current knowledge on asbestos, its characteristics and related health effects. These include, but are not limited to:

- May 24–25, 2001, "Asbestos Health Effects Conference" in Oakland, California;
- February 25–27, 2003, "Asbestos Cancer Risk Peer Consultation" in San Francisco, California; and
- June 12–13, 2003, "Asbestos Mechanisms of Toxicity Workshop" in Chicago, Illinois. Integration of the information gathered through these and other mechanisms will compose the

¹ We thus disagree with the commenter who stated, without citation, that the 1990 amendments to the CAA were intended to compel section 112(d) standards to control the fibers emitted from non-commercial sources. The commenter is correct in that section 112 is not limited to commercial asbestos emissions, but nothing in the statute or its legislative history of which EPA is aware indicate that Congress intended a particular meaning of "asbestos" or that particular fiber-emitting sources be regulated under section 112 by virtue of the inclusion of "asbestos" in the list of HAP.

support documents for the new IRIS file and will assist us in decisionmaking regarding contaminant asbestos.

As part of the response to the findings in Libby, the Agency has developed an action plan which identifies steps necessary to gather the information needed to decide whether regulations for sources of contaminant asbestos emissions are warranted. The action plan specifies vermiculite mining and processing operations as the first area of focus. Contrary to one commenter's assertion, the action plan also includes plans to assess emissions, exposure and risk associated with asbestos that occurs as a contaminant from other mining and processing operations, including taconite ore mining and processing. That assessment will inform decisions on specific risk-based regulation of asbestos that occurs as a contaminant in taconite ore mining and processing. Specific risk-based emission limitations for asbestos are not included in the technology-based final rule.

In addition, an International Fiber Symposium was held in St. Paul, MN in April 2003. The papers presented at the symposium are in a peer-review process and will then be published. Once the proceedings are published, the Minnesota Department of Health (MDH) will determine if they can conduct a risk assessment for fibers or if they can draw any conclusions about the potential health impacts from fibers. Based on MDH's findings, the MPCA and Minnesota Department of Natural Resources may make policy changes with respect to fibers. Until then, MPCA will continue to regulate airborne fibers from Northshore as required by the court who deemed the fibers a health concern.

Finally, we note that Northshore is in fact controlling emissions of its fibers in part with baghouses, which are the optimum control technology for air emission of fibers (a point made, among other places, in the *Reserve Mining* decision itself). Since the *Reserve Mining* decision, ambient air monitoring around the plant has demonstrated a significant reduction in fiber emissions through the installation of high efficiency baghouses on ore crushing and handling emission units and wet ESP on the indurating furnace exhaust stacks. Baghouses are not a control option for indurating furnaces due to the high moisture content (10 to 15 percent) in the exhaust gases. The high moisture content causes PM to cake and plug the filtering material causing filters to be ineffective. In addition, further reductions in fiber emissions are expected through compliance with the PM emission standards in the final rule.

Representatives at Northshore have indicated that existing emission units equipped with multiclones are likely to be replaced with more efficient PM control devices in order to comply with the PM emission standards in the final rule. Northshore representatives provided us with the estimated costs for such an equipment upgrade, and these control costs are reflected in our revised cost impacts for the final rule.

Formaldehyde

Comment: One commenter stated that EPA has a statutory obligation to set emission standards for formaldehyde. The commenter asserted that the standard for formaldehyde must be at least as stringent as the average formaldehyde emission level of the five best performing plants. The commenter stated that whether or not there are feasible control technologies for formaldehyde is irrelevant.

Response: As EPA stated at proposal, formaldehyde (and other organic HAP) are emitted in very low concentrations by taconite processing indurating furnaces, not because these organic HAP are contained in feed or fuel input to the process, but rather as products of incomplete combustion (PIC) necessarily generated when fossil fuels are burned (in any type of process, not just in indurating furnaces) (67 FR 77570). Formaldehyde from indurating furnace emissions has been measured through stack testing at concentrations that are typically less than 1 part per million (ppm).

The EPA stated somewhat inaccurately at proposal that formaldehyde emissions from indurating furnaces are currently uncontrolled. It is clear from context that we meant that there are no current "at-the-stack" controls for formaldehyde (and other PIC) emissions from these furnaces, although control of the combustion process minimizes PIC (including formaldehyde) formation and hence PIC emissions. We reiterate that at-the-stack controls in place to control PM emissions have no effect on PIC emissions. We also know of no feasible at-the-stack control technology for reducing formaldehyde emissions at these extremely low concentrations and at the exhaust gas temperatures typically encountered at indurating furnaces.

The only known technology for the control of formaldehyde emissions at concentrations of less than 1 ppm is thermal catalytic oxidation, in which formaldehyde is contacted with a precious metal catalyst in the presence of oxygen and high temperature (650 to 1,350 °F) to yield carbon dioxide and

water. Destruction efficiencies of 85 to 90 percent have been demonstrated on formaldehyde emissions contained in the exhaust gas from stationary combustion turbines at concentrations in the parts per billion range and temperatures of 1,000 °F or higher. Destruction efficiencies, however, decrease exponentially at reaction temperatures below 650 °F, reaching less than 10 percent at exhaust gas temperatures of 300 °F or lower, which is typical of most indurating furnaces. Burning large quantities of additional fuel, such as natural gas, to heat the exhaust gases to the desired temperature would generate large additional quantities of carbon dioxide (a gas potentially connected to global climate change) and NO_x (ozone precursors). As at proposal, given the significant issues of technical feasibility and adverse environmental impacts associated with use of this technology, it is not the proper basis for MACT standards (67 FR 77571).

We also reiterate that fuel switching is not a justifiable means of control. Most indurating furnaces currently utilize natural gas as a fuel, and PIC emissions are higher for natural gas than for coal, but switching to coal would increase emissions of HAP metals in much larger amounts than the minimal PIC emissions attributable to natural gas burning. See S. Rep. 101-228, 101st Cong. 1st sess. at 168 ("In cases where control strategies for two or more different pollutants are in actual conflict, the Administrator shall apply the same principle—maximum protection of human health shall be the objective test.")

Consequently, the only form of control currently used and feasible to minimize formaldehyde emissions is the proper and efficient operation of an indurating furnace with GCP. It is clear from the low measured levels of formaldehyde emitted from these furnaces that this means of control is highly effective.

In general, good efficiency of a combustion device is governed by time, temperature, and turbulence, the three "T's" of combustion. Efficient combustion is achieved when a selected fuel reaches an optimum temperature for a minimum residence time with sufficient turbulence to allow oxidation of all organic compounds to completely react to the products of combustion—water and carbon dioxide. However, there are many phenomena associated with combustion that lead to the formation of PIC. Examples of possible phenomena include: Unburned fuel, quenches or cool zones in the combustion area, fuel rich zones, low

combustion temperatures, insufficient air (oxygen) contact with fuel due to limited turbulence, and changes to the combustion process due to load swings or feed changes.

Good combustion practices typically encompass several elements such as the proper operation of the combustion process, routine inspection and performance analysis of the process, and preventative maintenance. More specific examples of GCP indicating the range of existing practices are listed below:

- Maintain operator logs;
- Develop procedures for startup, shutdown, and malfunction;
- Perform periodic evaluations or inspections;
- Perform burner or control adjustments/tune-ups;
- Monitor and maintain concentrations of carbon monoxide (CO), oxygen (O₂), or carbon dioxide (CO₂) in compliance with site-specific concentration limits in the combustion exhaust;
- Monitor and maintain combustion temperatures above a site-specific minimum value;
- Monitor fuel/air metering;
- Comply with a CO or total organic carbon (TOC) emission limit;
- Maintain proper liquid fuel atomization;
- Monitor fuel quality and handling procedures;
- Maintain combustion air distribution; and
- Maintain fuel dispersion.

Although all indurating furnaces need to use GCP to minimize PIC emissions, determining what precisely is GCP involves site-specific determinations for each furnace. For example, some indurating furnaces have been required to install NO_x emission controls such as low NO_x burners. The basic method used in reducing NO_x emissions is a reduction in combustion temperature, which is the opposite strategy needed for minimizing PIC (*i.e.*, increasing combustion temperature). Thus, due to differences in furnace design, operation, firing fuel, process controls, and air pollution control equipment, one set of GCP established for one type of indurating furnace may be different from those needed for another type of indurating furnace.

In addition, State operating permits for the taconite indurating furnaces do not require any specific set of GCP. However, based on discussions held with industry representatives, all sources already use a wide variety of work practices (*e.g.*, existing Standard Operating Procedures) to maintain proper and efficient operation of each indurating furnace. See the July 11,

2003 memorandum, "Meeting Minutes on Good Combustion Practices with Taconite Industry Representatives." Sources have a strong and inherent economic incentive to ensure that fuel is not wasted, and that the combustion device operates properly and is appropriately maintained. The lack of a uniform approach to assuring combustion efficiency is not surprising given the differences of indurating furnace designs, and the fact that existing Federal/State standards do not include GCP requirements for indurating furnaces.

Thus, we have determined that site-specific GCP are the MACT floor for formaldehyde emissions from existing sources. In evaluating potential beyond-the-floor options, we considered the only known at-the-stack technology for the control of formaldehyde emissions at concentrations of less than 1 ppm—thermal catalytic oxidation, which was described earlier. However, as discussed previously, given the significant issues of technical feasibility (*e.g.*, low exhaust gas temperatures, high volumetric flow rates of exhaust gas, and low concentrations of formaldehyde), adverse environmental impacts in the form of increased energy use, and the tremendous additional cost associated with use of this technology, we determined that a standard based on use of thermal catalytic oxidation was not a viable beyond-the-floor option. Since there is no other form of emission control or work practice to control formaldehyde emissions from indurating furnaces, the site-specific GCP documented in the operation and maintenance plan were also determined as the MACT floor for formaldehyde emissions from new indurating furnace sources.

We further find that under CAA section 112(h)(1), it is not feasible to prescribe or enforce an emission standard for HAP because at-the-stack controls are not feasible (as explained earlier), and monitoring parameters related to GCP can only meaningfully result in minimization of PIC emissions if such monitoring parameters are quantified on a site-specific basis.

Since it is not possible to identify any uniform requirements or set of work practices that would meaningfully reflect the use of GCP, the final rule requires each source to identify site-specific work practices for each indurating furnace and to document these GCP in an operation and maintenance plan in accordance with § 63.9600 of the final rule. A GCP control strategy could include a number of combustion conditions and work practices which, applied collectively,

promote good combustion performance and minimize the formation of formaldehyde/PIC emissions. Thus, the MACT requirement for these sources is to use GCP, and for each source to develop an operation and maintenance plan that details appropriate operating parameters for each of the following elements of GCP, or explains why such operating parameters are either inappropriate or unnecessary for the source ("inappropriate" or "unnecessary" to be determined by the degree to which PIC formation from fuel combustion in the furnace is minimized):

- Proper operating conditions for each indurating furnace (*e.g.*, minimum combustion temperature, maximum CO concentration in the furnace exhaust gases, burner alignment, or proper fuel-air distribution/mixing).
- Routine inspection and preventative maintenance and corresponding schedules of each indurating furnace.
- Performance analyses of each indurating furnace.
- Keeping applicable operator logs.
- Keeping applicable records to document compliance with each element.

A source's compliance with its startup, shutdown, and malfunction plan also will contribute to GCP.

A final determination that the values established in the operation and maintenance plan are appropriate GCP for the source would then be achieved by submitting the plan to the Administrator on or before the compliance date that is specified in § 63.9583 of the final rule for the affected source. The operation and maintenance plan must explain why the chosen elements and work practices are considered GCP for the affected source. The quantified parameters (*e.g.*, furnace operating temperature) contained in the plan become enforceable operating conditions unless and until the Administrator acts to establish new parameters.

The Administrator will evaluate the demonstration and determine whether the chosen elements and work practices minimize the formation of formaldehyde (and other PIC) and so constitute GCP for the furnace. The Administrator will review the adequacy of the site-specific procedures and the records to demonstrate that the plan constitutes GCP. If the Administrator determines that any portion of the plan is not adequate, we can reject those portions of the plan and request additional information addressing the relevant issues.

Finally, with respect to the commenter's point that EPA is obligated to establish MACT standards for formaldehyde, EPA has established such standards, based on GCP implemented by means of an operation and maintenance plan and site-specific determinations through the permitting process, as explained above.

HCl and HF

Comment: One commenter stated that EPA has a clear statutory obligation to set emission standards for each listed HAP, including HCl and HF. The commenter asserted that, just because plants are achieving some incidental control of acid gases, it does not free EPA of its statutory obligation to set a specific emission limit for HCl and HF. Two commenters stated that EPA must set a standard for HCl and HF that reflects, at a minimum, the average emission level achieved by the five best performing plants. One commenter cited the *National Lime* opinion which states "The CAA requires EPA to set MACT floors upon the average emission limitation achieved; it nowhere suggests that this achievement must be the product of specific intent."

One commenter stated that EPA's rejection of beyond-the-floor standards for HCl and HF is not logical when a technology is available and substantially reduces HAP. The commenter contended that available acid gas control technology would yield a far greater degree of reduction than is required by EPA's proposed standards, which require no reduction at all.

Response: Acid gases (HCl and HF) are formed in the indurating furnace due to the presence of chlorides and fluorides in pellet additives, such as dolomite and limestone, as well as in the ore bodies. The taconite industry has not installed equipment specifically for the purpose of controlling acid gases from indurating furnace stacks, but, as the commenters correctly note, intent is irrelevant in determining HAP control (*National Lime*). What matters is the extent of control, where control in fact occurs. Test data for HCl and HF emissions were available from seven indurating furnaces at six taconite plants. Since most of the furnaces have multiple stacks, these tests represent emissions from fifteen control devices: 8 venturi scrubbers, 2 multiclones, 3 dry ESP, and 2 wet ESP. These data show that, except for emissions from stacks controlled with multiclones, HCl and HF are emitted from indurating furnaces at very low concentrations, typically less than 3 ppm.

Of the six plants for which HCl and HF test data were available, three plants

conducted PM emissions tests concurrently with the HCl and HF tests. These tests represent emissions from 3 furnaces and 8 emission control devices: 4 venturi scrubbers, 2 multiclones, and a dry ESP/wet ESP ducted together. An analysis of the HCl and HF emissions data and the corresponding PM emissions data indicates that, for this industry, there is a correlation between acid gas and PM emissions from control devices on indurating furnaces. Specifically, the data indicate that stacks with higher PM emissions also have higher acid gas emissions, and likewise, stacks with lower PM emissions have lower acid gas emissions ("Correlation of Acid Gas Emissions to PM Emissions for Taconite Indurating Furnaces," July 2003). Consistent with this correlation, the best performing sources for PM are also the best performing for acid gas emissions.

There is an engineering basis for this correlation. Due to the strong affinity of acid gases for water, PM control equipment that uses water, such as wet scrubbers and wet ESP, has the capability of reducing HCl and HF emissions substantially. Therefore, wet scrubbers and wet ESP control technologies used for the reduction of PM emissions from taconite indurating furnaces to achieve the MACT level of control for HAP metals are expected to achieve a reduction of acid gas emissions as well. Standards requiring good control of PM emissions for this industry will also achieve control of acid gas emissions. For the taconite industry, PM emissions can be used as a surrogate for the acid gases emitted from taconite indurating furnaces. Therefore, we are establishing standards for total PM as a surrogate pollutant for the acid gases, HCl and HF. This finding is valid only for these taconite indurating furnace data; data for other industries may not show a correlation between acid gas emissions and PM emissions. Therefore, this finding should not be used as a precedent in other rulemakings.

Establishing separate standards for acid gases would impose costly and significantly more-complex compliance and monitoring requirements. In addition, establishing separate standards for acid gases would achieve little, if any, HAP emissions reductions beyond what would be achieved using the total PM surrogate pollutant approach. Consequently, EPA has chosen to establish a standard for acid gases using the PM surrogate. Therefore, the MACT floor level of control for acid gases is equivalent to (and expressed as) the MACT floor level of 0.01 gr/dscf for PM.

We then examined the beyond-the-floor option. The next increment of control beyond the floor is the installation of venturi scrubbers or dry ESP capable of meeting a PM concentration limit of 0.006 gr/dscf, which is equivalent to the level of PM control required for new furnaces. We estimate the additional capital cost of going from the MACT level of 0.01 gr/dscf for PM to 0.006 gr/dscf to be \$99.7 million per year. We estimate the corresponding additional reduction in acid gases achieved by this PM level to be 112 tons of acid gases. The cost per ton of acid gas is \$890,000/ton. The energy increase would be expected to be 53,436 mega-watt hours per year, primarily due to the energy requirements of new wet scrubbers and dry ESP. (Beyond-the-Floor Analysis for Acid Gases, July 2003). The high cost, the small reduction in HAP emissions, and the additional energy requirements do not justify this beyond-the-floor alternative for acid gases. Consequently, we chose the MACT floor level of control for PM of 0.01 gr/dscf as the existing indurating furnace MACT for acid gases. New source MACT for acid gases is equivalent to the PM new source MACT level of 0.006 gr/dscf.

By establishing a standard for acid gases, we have addressed the commenters' point that the Agency is legally obligated to do so.

PM as a Surrogate for Metallic HAP

Comment: One commenter asserted that EPA cannot use a surrogate when doing so would result in regulations that do not include emission standards for each listed HAP or in standards that do not at least match the average emission level that the best sources achieve. The commenter pointed out that the Court has already held that the use of PM as a surrogate for non-mercury metals is not reasonable and, therefore, not lawful where factors other than PM control affect emissions of such metals (*National Lime*). The commenter reasoned that, since each plant's actual metallic HAP emission levels are influenced not just by PM control technology but also to a very large extent by the HAP metal content in the ore used, the use of PM as a surrogate for non-mercury metals is unlawful.

The commenter stated that, in the past, EPA has recognized that it can set standards for groups of metals that behave similarly (for example, in the hazardous waste combustors rule). The commenter asserted that EPA has no basis for assuming that its only two options are either to set a PM standard for all HAP or to set individual emission standards for each HAP. The commenter

stated that EPA must explain why it cannot set emission standards for groupings of metals or for representative surrogate metals rather than just a PM standard.

The commenter explained that the correlation of PM to any given metal varies with the volatility of the metal in question; therefore, EPA cannot assume that all the metals emitted by taconite plants will consistently behave as PM. The commenter stated that different PM control devices have different collection efficiencies for different metals. Therefore, the commenter stated that, even if all taconite plants had identical HAP metal input, EPA could not assume that any two plants have identical (or even similar) emission rates for any given metal.

Two commenters supported using PM as a surrogate for total HAP emissions. The commenters stated that "it is far more appropriate to use PM for total metal HAP than to attempt to specialty individual metal HAP. The earthen material that is processed is not necessarily identical in composition in each and every shovelful of material. It would be impossible to account for differences in individual HAP metal content for each load processed."

Response: We disagree with the first commenter; PM is a valid surrogate for the HAP metal compounds emitted from taconite iron ore processing plants. As indicated in the preamble to the proposed rule, metallic HAP are emitted from ore crushing and handling units, indurating furnaces, finished pellet handling units, and ore dryers. We determined that it is not practical to establish individual standards for each metallic HAP that could be present in the various processes (e.g., separate standards for manganese compound emissions, separate standards for lead compound emissions, and so forth for each metal compound group listed as HAP that is potentially present).

A key parameter for the control of both semi-volatile and non-volatile metal compounds is the operating temperature of the air pollution control device that is applied. At temperatures of 200 to 400 °F, the range typical of control devices applied to emissions from taconite indurating furnaces, any semi-volatile and non-volatile HAP metal compounds present, except elemental mercury, would exist in the form of fine PM and, therefore, would be controlled in direct relationship to PM. As a result, strong correlations exist between PM emissions and emissions of the individual metallic HAP compounds. Control technologies used for the reduction of PM emissions achieve comparable levels of reduction

of metallic HAP emissions. Standards requiring good control of PM emissions will also achieve a similar level of control of metallic HAP emissions. Therefore, we are establishing standards for total PM as a surrogate pollutant for the individual metallic HAP. Establishing separate standards for each metallic HAP would impose costly and significantly more complex compliance and monitoring requirements. In addition, establishing separate standards for each metallic HAP would achieve little, if any, HAP emissions reductions beyond what would be achieved using the total PM surrogate pollutant approach.

IV. Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of the final rule are based on the replacement of poor performing controls at existing sources with new controls capable of meeting the emission limits established in the final rule. We did not estimate impacts for new sources since we do not project any new or reconstructed affected sources becoming subject to the new source MACT requirements in the foreseeable future. Specifically, we anticipate that two plants will install new impingement scrubbers on a total of 33 out of the 264 ore crushing and handling emission units to meet the PM emission limit. We expect that four plants will install new venturi-rod wet scrubbers or will upgrade existing wet scrubbers on at least one of their indurating furnaces. In total, we estimate that the existing controls will be replaced with new venturi-rod wet scrubbers on three of the 47 indurating furnace stacks. We estimate that the existing controls will be upgraded with new components on eight of the 47 indurating furnace stacks. We anticipate that four plants will install new impingement scrubbers on a total of 11 out of the 82 finished pellet handling emission units to meet the finished pellet handling PM emission limit.

A. What Are the Air Emission Impacts?

The installation of new controls and upgrades discussed in the preceding paragraph will result in reductions in emissions of metal HAP, acid gases, and PM. Overall, the final standards are expected to reduce HAP emissions by a total of 270 tpy, a reduction of about 43 percent. Metallic HAP emissions will be reduced by 14 tpy (a 42 percent reduction) and acid gas emissions (HCl and HF) will be reduced by 256 tpy (a 51 percent reduction). In addition, the final standards are expected to reduce

PM emissions by 10,538 tpy, a reduction of about 62 percent.

B. What Are the Cost Impacts?

The total installed capital costs to the industry for the installation of control equipment are estimated to be \$57 million. Total annualized costs are estimated at \$9 million/yr, which includes \$4.5 million/yr in capital recovery costs, \$3.2 million/yr in emission control device operation and maintenance costs, and \$0.9 million/yr for monitoring, recordkeeping and reporting. These costs are based on the installation of new wet scrubbers on 33 ore crushing and handling units, three indurating furnace stacks, and 11 finished pellet handling units. The costs are also based on upgrading two wet scrubbers and six ESP for indurating furnaces. In addition, the estimate includes the cost of bag leak detection systems for baghouses, CPMS for scrubbers and wet ESP, and COMS for dry ESP.

C. What Are the Economic Impacts?

We prepared an economic analysis to evaluate the impact the final rule will have on the producers and consumers of taconite and society as a whole. The taconite industry consists of eight companies owning eight mining operations, concentration plants, and pelletizing plants. The total annualized social cost of the final rule is \$8.6 million (in 2002 dollars), which is almost the same as the total annualized compliance cost. This cost is distributed among consumers (mainly steel mills) who may buy less and/or spend more on taconite iron ore as a result of the Taconite NESHAP, including merchant taconite producers that sell their output on the market, integrated iron and steel plants that produce and consume the taconite captively within the company, steel producers that use electric arc furnace (EAF) technology to produce steel from scrap, and foreign producers. Consumers incur \$2.8 million of the total social costs, merchant producers incur \$3.7 million in costs, and integrated iron and steel producers incur \$4.5 million in costs. The EAF producers and foreign producers enjoy a net gain in revenues of \$1.1 million and \$1.3 million, respectively.

Our analysis indicates that the taconite iron ore market will experience minimal changes in the price and quantity of ore produced, and in the prices and quantities of steel mill products (some of which are produced using taconite). Prices in the taconite iron ore market are estimated to increase by 0.17 percent while production may decrease by 0.14 percent. The price of

steel mill products is projected to increase by less than 4/1000th of 1 percent and the quantity produced is projected to change by less than 3/1000th of 1 percent. The EAF steel producers who make steel from scrap rather than iron ore are projected to increase their output by approximately 15/100th of 1 percent in response to the slight increase in the price of steel mill products. While the market overall shows minimal impacts associated with the final rule, the financial stability of the firms operating in this market is very uncertain. The past few years have been a period of tremendous change in the iron and steel industry, during which more than 29 companies in the industry have declared bankruptcy, several plants have closed, and EAF technology has secured a growing share of the market. These changes have occurred due to evolving economic conditions, both domestically and abroad, and technological developments within the industry. Conditions continue to be challenging for iron and steel producers. In an assessment of the impacts on the companies owning taconite plants, we find the estimated costs of the final rule are uniformly less than 1 percent of baseline sales revenues, and typically less than 3 percent of baseline profits. However, four of the companies had negative operating income in 2002, a period of time during in which the entire Nation experienced lower than the historical average for economic activity. A number of companies owning taconite plants have filed for protection under Chapter 11 of the bankruptcy code since 2001. Thus, there is reason to be concerned about the financial condition of companies owning taconite plants. The incremental effect of the final rule on firm financial stability, however, is projected to be very small.

We also prepared a sensitivity analysis that examined the regional impacts of the final rule. All the taconite production plants are located within four counties in Minnesota and one in Michigan. Thus, the impacts of the final rule are expected to be concentrated geographically. We modeled the supply and demand linkages of the various industries and households within each county to estimate changes that may occur in the region as the taconite industry complies with the final NESHAP. We estimate that as industries that interact with the taconite industry (such as construction and earth moving equipment industries) react to the changes in the taconite market, and as household incomes are reduced as a result of changes in all the various

industries in the region, the impact of the final rule will add approximately \$0.4 million in economic cost to the region. This represents approximately 2/100ths of 1 percent of total sales in those counties. Thus, even though the impacts are concentrated in only five counties, we believe that the impacts on those county economies will not be very large.

For more information on these economic impacts, please refer to the economic impact analysis that is in the final rule docket (ID No. OAR-2002-0039).

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

We project that the implementation of the final rule will increase water usage by 8 billion gallons per year industrywide. This increased water usage is expected to result from the installation of new wet scrubbers needed for compliance. Much of this water will be discharged as scrubber blowdown to the tailings basin(s) located at each plant. At two or more of the affected facilities, there is the potential that this increased wastewater burden will result in new or aggravated violations of permitted wastewater discharge limits from the tailings basins unless significant measures are taken to install new or upgrade existing wastewater treatment systems. The energy increase is expected to be 14,309 megawatt-hours per year, primarily due to the energy requirements of new wet scrubbers.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlement, grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or

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

It has been determined that the final rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The final rule requires applicable one-time notifications required by the General Provisions for each affected source. As required by the NESHAP General Provisions, all plants must prepare and operate by a startup, shutdown, and malfunction plan. Plants are also required to prepare an operation and maintenance plan for control devices subject to operating limits, a monitoring plan for baghouses and CPMS, a fugitive emissions control plan, and a performance testing plan. Records are required to demonstrate continuous compliance with the monitoring, operation, and maintenance requirements for control devices and monitoring systems. Semiannual compliance reports also are required. These reports must describe any deviation from the standards, any period a continuous monitoring system was "out-of-control," or any startup, shutdown, or malfunction event where actions taken to respond were inconsistent with the startup, shutdown, and malfunction plan. If no deviation or other event occurred, only a summary report is required. Consistent with the General Provisions, if actions taken in response to a startup, shutdown, or malfunction event are not consistent with the plan, an immediate report must

be submitted within 2 days of the event with a letter report 7 days later.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after October 30, 2003) is estimated to total 111 labor hours per year at a total annual cost of 920,722, including labor costs, monitoring equipment capital costs, and operation and maintenance costs. Total capital costs associated with the monitoring equipment is estimated at \$4,576,955. The total annualized cost of the monitoring equipment is estimated at \$392,751. This estimate includes the capital, operating, and maintenance costs associated with the installation and operation of the monitoring equipment.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, 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 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. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number of the approved information collection requirements contained in the final rule.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: a small business according to the U.S. Small Business Administration (SBA) size standards for NAICS code 21221 (Taconite Iron Ore Processing Facilities)

of 500 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Based on the SBA size category for this source category, no small businesses are subject to the final rule and its requirements.

D. 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 by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires 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 final 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.

Today's final rule contains no Federal mandate (under the regulatory provisions of the UMRA) for State, local, or tribal governments. The EPA has determined that the final 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 of \$100 million or more in any 1 year. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (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."

The 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. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

The final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal

government and Indian tribes. No tribal governments own facilities subject to the Taconite NESHAP. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant,” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, 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. The final rule is not subject to Executive Order 13045 because it is based on control technology and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites the following standards in the final rule: EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, and 17. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 2F and 2G, and none were brought to our attention in comments.

The voluntary consensus standard ASME PTC 19–10–1981—Part 10, “Flue and Exhaust Gas Analyses,” is cited in the final rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981—Part 10 is an acceptable alternative to Method 3B.

The search for emissions measurement procedures identified 14 voluntary consensus standards. The EPA determined that 12 of these 14 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the final rule were impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the 12 methods are available in the docket.

Two of the 14 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, “Flow Measurement by Velocity Traverse,” for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, “Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,” for EPA Method 2.

Sections 63.9621 and 63.9622 to 40 CFR part 63, subpart RRRRR, list EPA testing methods included in the final rule. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement 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. The EPA will submit a report containing the final 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 final rule in the **Federal Register**. The final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 25, 2003.

Marianne Lamont Horinko,
Acting Administrator.

■ For the reasons stated 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.*

■ 2. Part 63 is amended by adding subpart RRRRR to read as follows:

Subpart RRRRR—National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing

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What This Subpart Covers

§ 63.9580 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for taconite iron ore processing. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations (emission limits and operating limits),

work practice standards, and operation and maintenance requirements in this subpart.

§ 63.9581 Am I subject to this subpart?

You are subject to this subpart if you own or operate a taconite iron ore processing plant that is (or is part of) a major source of hazardous air pollutant (HAP) emissions on the first compliance date that applies to you. Your taconite iron ore processing plant is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

§ 63.9582 What parts of my plant does this subpart cover?

(a) This subpart applies to each new and existing affected source at your taconite iron ore processing plant.

(b) The affected sources are each new or existing ore crushing and handling operation, ore dryer, indurating furnace, and finished pellet handling operation at your taconite iron ore processing plant, as defined in § 63.9652.

(c) This subpart covers emissions from ore crushing and handling emission units, ore dryer stacks, indurating furnace stacks, finished pellet handling emission units, and fugitive dust emissions.

(d) An ore crushing and handling operation, ore dryer, indurating furnace, or finished pellet handling operation at your taconite iron ore processing plant is existing if you commenced construction or reconstruction of the affected source before December 18, 2002.

(e) An ore crushing and handling operation, ore dryer, indurating furnace, or finished pellet handling operation at your taconite iron ore processing plant is new if you commence construction or reconstruction of the affected source on or after December 18, 2002. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

§ 63.9583 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than October 30, 2006.

(b) If you have a new affected source and its initial startup date is on or before October 30, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by October 30, 2003.

(c) If you have a new affected source and its initial startup date is after October 30, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your taconite iron ore processing plant is an area source that becomes a major source of HAP, the compliance dates in paragraphs (d)(1) and (2) of this section apply to you.

(1) Any portion of the taconite iron ore processing plant that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the taconite iron ore processing plant must be in compliance with this subpart no later than 3 years after the plant becomes a major source.

(e) You must meet the notification and schedule requirements in § 63.9640. Several of these notifications must be submitted before the compliance date for your affected source.

Emission Limitations and Work Practice Standards

§ 63.9590 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit for control devices in paragraphs (b)(1) through (5) of this section that applies to you.

(1) Except as provided in paragraph (b)(2) of this section, for each wet scrubber applied to meet any particulate matter emission limit in Table 1 to this subpart, you must maintain the daily average pressure drop and daily average scrubber water flow rate at or above the minimum levels established during the initial performance test.

(2) For each dynamic wet scrubber applied to meet any particulate matter emission limit in Table 1 to this subpart, you must maintain the daily average scrubber water flow rate and either the daily average fan amperage (a surrogate for fan speed as revolutions per minute) or the daily average pressure drop at or above the minimum levels established during the initial performance test.

(3) For each dry electrostatic precipitator applied to meet any particulate matter emission limit in Table 1 to this subpart, you must meet the operating limits in paragraph (b)(3)(i) or (ii) of this section.

(i) Maintain the 6-minute average opacity of emissions exiting the control device stack at or below the level

established during the initial performance test.

(ii) Maintain the daily average secondary voltage and daily average secondary current for each field at or above the minimum levels established during the initial performance test.

(4) For each wet electrostatic precipitator applied to meet any particulate matter emission limit in Table 1 to this subpart, you must meet the operating limits in paragraphs (b)(4)(i) through (iii) of this section.

(i) Maintain the daily average secondary voltage for each field at or above the minimum levels established during the initial performance test.

(ii) Maintain the daily average stack outlet temperature at or below the maximum levels established during the initial performance test.

(iii) Maintain the daily average water flow rate at or above the minimum levels established during the initial performance test.

(5) If you use any air pollution control device other than a baghouse, wet scrubber, dynamic scrubber, dry electrostatic precipitator, or wet electrostatic precipitator, you must submit a site-specific monitoring plan in accordance with § 63.9631(f).

(c) You may petition the Administrator for approval of alternatives to the monitoring requirements in paragraphs (b)(1) through (4) of this section as allowed under § 63.8(f) and as defined in § 63.90.

§ 63.9591 What work practice standards must I meet?

(a) You must prepare, and at all times operate according to, a fugitive dust emissions control plan that describes in detail the measures that will be put in place to control fugitive dust emissions from the locations listed in paragraphs (a)(1) through (6) of this section.

(1) Stockpiles (includes, but is not limited to, stockpiles of uncrushed ore, crushed ore, or finished pellets);

(2) Material transfer points;

(3) Plant roadways;

(4) Tailings basin;

(5) Pellet loading areas; and

(6) Yard areas.

(b) A copy of your fugitive dust emissions control plan must be submitted for approval to the Administrator on or before the applicable compliance date for the affected source as specified in § 63.9583. The requirement for the plant to operate according to the fugitive dust emissions control plan must be incorporated by reference in the operating permit for the plant that is issued by the designated permitting authority under 40 CFR part 70 or 40 CFR part 71.

(c) You can use an existing fugitive dust emissions control plan provided it meets the requirements in paragraphs (c)(1) through (3) of this section.

(1) The plan satisfies the requirements of paragraph (a) of this section.

(2) The plan describes the current measures to control fugitive dust emission sources.

(3) The plan has been approved as part of a State implementation plan or title V permit.

(d) You must maintain a current copy of the fugitive dust emissions control plan onsite, and it must be available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

Operation and Maintenance Requirements

§ 63.9600 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare, and at all times operate according to, a written operation and maintenance plan for each control device applied to meet any particulate matter emission limit in Table 1 to this subpart and to meet the requirement of each indurating furnace subject to good combustion practices (GCP). Each site-specific operation and maintenance plan must be submitted to the Administrator on or before the compliance date that is specified in § 63.9583 for your affected source. The plan you submit must explain why the chosen practices (*i.e.*, quantified objectives) are effective in performing corrective actions or GCP in minimizing the formation of formaldehyde (and other products of incomplete combustion). The Administrator will review the adequacy of the site-specific practices and objectives you will follow and the records you will keep to demonstrate compliance with your Plan. If the Administrator determines that any portion of your operation and maintenance plan is not adequate, we can reject those portions of the plan, and request that you provide additional information addressing the relevant issues. In the interim of this process, you will continue to follow your current site-specific practices and objectives, as submitted, until your revisions are accepted as adequate by the

Administrator. You must maintain a current copy of the operation and maintenance plan onsite, and it must be available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart. Each operation and maintenance plan must address the elements in paragraphs (b)(1) through (4) of this section.

(1) Preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(2) Corrective action procedures for bag leak detection systems. In the event a bag leak detection system alarm is triggered, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Corrective actions may include, but are not limited to, the actions listed in paragraphs (b)(2)(i) through (vi) of this section.

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Adjusting the process operation producing the particulate emissions.

(3) Corrective action procedures for continuous parameter monitoring systems (CPMS) for all air pollution control devices except for baghouses. In the event you exceed an established operating limit for an air pollution control device except for a baghouse, you must initiate corrective action to determine the cause of the operating limit exceedance and complete the corrective action within 10 calendar days. The corrective action procedures you take must be consistent with the installation, operation, and maintenance procedures listed in your site-specific CPMS monitoring plan in accordance with § 63.9632(b).

(4) Good combustion practices for indurating furnaces. You must identify and implement a set of site-specific GCP for each type of indurating furnace at your plant. These GCP should correspond to your standard operating procedures for maintaining the proper

and efficient combustion within each indurating furnace. Good combustion practices include, but are not limited to, the elements listed in paragraphs (b)(4)(i) through (v) of this section.

(i) Proper operating conditions for each indurating furnace (*e.g.*, minimum combustion temperature, maximum carbon monoxide concentration in the furnace exhaust gases, burner alignment, or proper fuel-air distribution/mixing).

(ii) Routine inspection and preventative maintenance and corresponding schedules of each indurating furnace.

(iii) Performance analyses of each indurating furnace.

(iv) Keeping applicable operator logs.

(v) Keeping applicable records to document compliance with each element.

General Compliance Requirements

§ 63.9610 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the requirements in paragraphs (a)(1) through (6) in this section at all times, except during periods of startup, shutdown, and malfunction. The terms startup, shutdown, and malfunction are defined in § 63.2.

(1) The emission limitations in § 63.9590.

(2) The work practice standards in § 63.9591.

(3) The operation and maintenance requirements in § 63.9600.

(4) The notification requirements in § 63.9640.

(5) The reporting requirements in § 63.9641.

(6) The recordkeeping requirements in § 63.9642.

(b) During the period between the compliance date specified for your affected source in § 63.9583 and the date upon which continuous monitoring systems have been installed and certified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment. This includes the daily monitoring and recordkeeping of air pollution control device operating parameters as specified in § 63.9590(b).

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

Initial Compliance Requirements

§ 63.9620 On which units and by what date must I conduct performance tests or other initial compliance demonstrations?

(a) For each ore crushing and handling affected source, you must demonstrate initial compliance with the emission limits in Table 1 to this subpart by conducting an initial performance test for particulate matter as specified in paragraphs (a)(1) and (2) of this section.

(1) Except as provided in paragraph (e) of this section, an initial performance test must be performed on all stacks associated with ore crushing and handling.

(2) Initial performance tests must be completed no later than 180 calendar days after the compliance date specified in § 63.9583. Performance tests conducted between October 30, 2003 and no later than 180 days after the corresponding compliance date can be used for initial compliance demonstration, provided the tests meet the initial performance testing requirements of this subpart.

(b) For each indurating furnace affected source, you must demonstrate initial compliance with the emission limits in Table 1 to this subpart by conducting an initial performance test for particulate matter as specified in paragraphs (b)(1) and (2) of this section.

(1) An initial performance test must be performed on all stacks associated with each indurating furnace.

(2) Initial performance tests must be completed no later than 180 calendar days after the compliance date specified in § 63.9583. Performance tests conducted between October 30, 2003 and no later than 180 days after the corresponding compliance date can be used for initial compliance demonstration, provided the tests meet the initial performance testing requirements of this subpart. For indurating furnaces with multiple stacks, the performance tests for all stacks must be completed within a reasonable period of time, such that the indurating furnace operating characteristics remain representative for the duration of the stack tests.

(c) For each finished pellet handling affected source, you must demonstrate initial compliance with the emission limits in Table 1 to this subpart by conducting an initial performance test for particulate matter as specified in paragraphs (c)(1) and (2) of this section.

(1) Except as provided in paragraph (e) of this section, an initial performance test must be performed on all stacks associated with finished pellet handling.

(2) Initial performance tests must be completed no later than 180 calendar days after the compliance date specified in § 63.9583. Performance tests conducted between October 30, 2003 and no later than 180 days after the corresponding compliance date can be used for initial compliance demonstration, provided the tests meet the initial compliance testing requirements of this subpart.

(d) For each ore dryer affected source, you must demonstrate initial compliance with the emission limits in Table 1 to this subpart by conducting an initial performance test for particulate matter as specified in paragraphs (d)(1) and (2) of this section.

(1) An initial performance test must be performed on all stacks associated with each ore dryer.

(2) Initial performance tests must be completed no later than 180 calendar days after the compliance date specified in § 63.9583. Performance tests conducted between October 30, 2003 and no later than 180 days after the corresponding compliance date can be used for initial compliance demonstration, provided the tests meet the initial compliance testing requirements of this subpart. For ore dryers with multiple stacks, the performance tests for all stacks must be completed within a reasonable period of time, such that the ore dryer operating characteristics remain representative for the duration of the stack tests.

(e) For ore crushing and handling affected sources and finished pellet handling affected sources, in lieu of conducting initial performance tests for particulate matter on all stacks, you may elect to group a maximum of six similar emission units together and conduct an initial compliance test on one representative emission unit within each group of similar emission units. The determination of whether emission units are similar must meet the criteria in paragraph (f) of this section. If you decide to test representative emission units, you must prepare and submit a testing plan as described in paragraph (g) of this section.

(f) If you elect to test representative emission units as provided in paragraph (e) of this section, the units that are grouped together as similar units must meet the criteria in paragraphs (f)(1) through (3) of this section.

(1) All emission units within a group must be of the same process type (*e.g.*, primary crushers, secondary crushers, tertiary crushers, fine crushers, ore conveyors, ore bins, ore screens, grate feed, pellet loadout, hearth layer, cooling stacks, pellet conveyor, and pellet screens). You cannot group

emission units from different process types together for the purposes of this section.

(2) All emission units within a group must also have the same type of air pollution control device (*e.g.*, wet scrubbers, dynamic wet scrubbers, rotoclones, multiclones, wet and dry electrostatic precipitators, and baghouses). You cannot group emission units with different air pollution control device types together for the purposes of this section.

(3) The site-specific operating limits established for the emission unit selected as representative of a group of similar emission units will be used as the operating limit for each emission unit within the group. The operating limit established for the representative unit must be met by each emission unit within the group.

(g) If you plan to conduct initial performance tests on representative emission units within an ore crushing and handling affected source or a finished pellet handling affected source, you must submit a testing plan for initial performance tests. This testing plan must be submitted to the Administrator or delegated authority no later than 90 days prior to the first scheduled initial performance test. The testing plan must contain the information specified in paragraphs (g)(1) through (3) of this section.

(1) A list of all emission units. This list must clearly identify all emission units that have been grouped together as similar emission units. Within each group of emission units, you must identify the emission unit that will be the representative unit for that group and subject to initial performance testing.

(2) A list of the process type and type of air pollution control device on each emission unit.

(3) A schedule indicating when you will conduct an initial performance test for particulate matter for each representative emission unit.

(h) For each work practice standard and operation and maintenance requirement that applies to you where initial compliance is not demonstrated using a performance test, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.9583.

(i) If you commenced construction or reconstruction of an affected source between December 18, 2002 and October 30, 2003, you must demonstrate initial compliance with either the proposed emission limit or the promulgated emission limit no later than 180 calendar days after October 30,

2003 or no later than 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(j) If you commenced construction or reconstruction of an affected source between December 18, 2002 and October 30, 2003, and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by 3 years and 180 calendar days after October 30, 2003, or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.9621 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and paragraphs (b) and (c) of this section.

(b) For each ore crushing and handling affected source and each finished pellet handling affected source, you must determine compliance with the applicable emission limit for particulate matter in Table 1 to this subpart by following the test methods and procedures in paragraphs (b)(1) through (3) of this section.

(1) Except as provided in § 63.9620(e), determine the concentration of particulate matter in the stack gas for each emission unit according to the test methods in appendix A to part 60 of this chapter. The applicable test methods are listed in paragraphs (b)(1)(i) through (v) of this section.

(i) Method 1 or 1A to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G, as applicable, to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5, 5D, or 17 to determine the concentration of particulate matter.

(2) Each Method 5, 5D, or 17 performance test must consist of three separate runs. Each run must be conducted for a minimum of 2 hours. The average particulate matter concentration from the three runs will be used to determine compliance, as shown in Equation 1 of this section.

$$C_i = \frac{C_1 + C_2 + C_3}{3} \quad (\text{Eq. 1})$$

Where:

C_i = Average particulate matter concentration for emission unit, grains per dry standard cubic foot, (gr/dscf);

C_1 = Particulate matter concentration for run 1 corresponding to emission unit, gr/dscf;

C_2 = Particulate matter concentration for run 2 corresponding to emission unit, gr/dscf; and

C_3 = Particulate matter concentration for run 3 corresponding to emission unit, gr/dscf.

(3) For each ore crushing and handling affected source and each finished pellet handling affected source, you must determine the flow-weighted mean concentration of particulate matter emissions from all emission units in each affected source following the procedure in paragraph (b)(3)(i) or (ii) of this section.

(i) If an initial performance test is conducted on all emission units within an affected source, calculate the flow-weighted mean concentration of particulate matter emissions from the affected source using Equation 2 of this section.

$$C_a = \frac{\sum_{i=1}^n (C_i * Q_i)}{\sum_{i=1}^n Q_i} \quad (\text{Eq. 2})$$

Where:

C_a = Flow-weighted mean concentration of particulate matter for all emission units within affected source, (gr/dscf);

C_i = Average particulate matter concentration measured during the performance test from emission unit "i" in affected source, as determined using Equation 1 of this section, gr/dscf;

Q_i = Average volumetric flow rate of stack gas measured during the performance test from emission unit "i" in affected source, dscf/hr; and

n = Number of emission units in affected source.

(ii) If you are grouping similar emission units together in accordance with § 63.9620(e), you must follow the procedures in paragraphs (b)(3)(ii)(A) through (C) of this section.

(A) Assign the average particulate matter concentration measured from the representative unit, as determined from Equation 1 of this section, to each emission unit within the corresponding group of similar units.

(B) Establish the maximum operating volumetric flow rate of exhaust gas from each emission unit within each group of similar units.

(C) Using the data from paragraphs (b)(3)(ii)(A) and (B) of this section, calculate the flow-weighted mean concentration of particulate matter

emissions from the affected source using Equation 3 of this section.

$$C_a = \frac{\sum_{k=1}^m (C_k * Q_k)}{\sum_{k=1}^m Q_k} \quad (\text{Eq. 3})$$

Where:

C_a = Flow-weighted mean concentration of particulate matter for all emission units within affected source, gr/dscf;

C_k = Average particulate matter concentration measured during the performance test from the representative emission unit in group "k" of affected source "a," as determined using Equation 1 of this section, gr/dscf;

Q_k = Sum of the maximum operating volumetric flow rates of stack gas from all similar emission units within group "k" of affected source, dscf/hr; and

m = Number of similar emission unit groups in affected source.

(c) For each ore dryer affected source and each indurating furnace affected source, you must determine compliance with the applicable emission limit for particulate matter in Table 1 to this subpart by following the test methods and procedures in paragraphs (c)(1) through (3) of this section.

(1) Determine the concentration of particulate matter for each stack according to the test methods in 40 CFR part 60, appendix A. The applicable test methods are listed in paragraphs (c)(1)(i) through (v) of this section.

(i) Method 1 or 1A to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G, as applicable, to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5, 5D, or 17 to determine the concentration of particulate matter.

(2) Each Method 5, 5D, or 17 performance test must consist of three separate runs. Each run must be conducted for a minimum of 2 hours. The average particulate matter concentration from the three runs will be used to determine compliance, as shown in Equation 1 of this section.

(3) For each ore dryer and each indurating furnace with multiple stacks, calculate the flow-weighted mean concentration of particulate matter emissions using Equation 4 of this section.

$$C_b = \frac{\sum_{j=1}^n (C_j * Q_j)}{\sum_{j=1}^n Q_j} \quad (\text{Eq. 4})$$

Where:

C_b = Flow-weighted mean concentration of particulate matter for all stacks associated with affected source, gr/dscf;

C_j = Average particulate matter concentration measured during the performance test from stack "j" in affected source, as determined using Equation 1 of this section, gr/dscf;

Q_j = Average volumetric flow rate of stack gas measured during the performance test from stack "j" in affected source, dscf/hr;

n = Number of stacks associated with affected source.

§ 63.9622 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?

(a) For wet scrubbers subject to performance testing in § 63.9620 and operating limits for pressure drop and scrubber water flow rate in § 63.9590(b)(1), you must establish site-specific operating limits according to the procedures in paragraphs (a)(1) through (3) of this section.

(1) Using the CPMS required in § 63.9631(b), measure and record the pressure drop and scrubber water flow rate every 15 minutes during each run of the particulate matter performance test.

(2) Calculate and record the average pressure drop and scrubber water flow rate for each individual test run. Your operating limits are established as the lowest average pressure drop and the lowest average scrubber water flow rate corresponding to any of the three test runs.

(3) If a rod-deck venturi scrubber is applied to an indurating furnace to meet any particulate matter emission limit in Table 1 to this subpart, you may establish a lower average pressure drop operating limit by using historical average pressure drop data from a certified performance test completed on or after December 18, 2002 instead of using the average pressure drop value determined during the initial performance test, as specified in paragraph (a)(2) of this section. If historical average pressure drop data are used to establish an operating limit (*i.e.*, using data from a certified performance test conducted prior to the promulgation date of the final rule), then the average particulate matter concentration corresponding to the historical performance test must be at or below the applicable indurating furnace emission limit, as listed in Table 1 to this subpart.

(b) For dynamic wet scrubbers subject to performance testing in § 63.9620 and operating limits for scrubber water flow rate and either fan amperage or pressure drop in § 63.9590(b)(2), you must establish site-specific operating limits according to the procedures in paragraphs (b)(1) and (2) of this section.

(1) Using the CPMS required in § 63.9631(b), measure and record the scrubber water flow rate and either the fan amperage or pressure drop every 15 minutes during each run of the particulate matter performance test.

(2) Calculate and record the average scrubber water flow rate and either the average fan amperage or average pressure drop for each individual test run. Your operating limits are established as the lowest average scrubber water flow rate and either the lowest average fan amperage or pressure drop value corresponding to any of the three test runs.

(c) For a dry electrostatic precipitator subject to performance testing in § 63.9620 and operating limits in § 63.9590(b)(3), you must establish a site-specific operating limit according to the procedures in paragraphs (c)(1) or (2) of this section.

(1) If the operating limit for your dry electrostatic precipitator is a 6-minute average opacity of emissions value, then you must follow the requirements in paragraphs (c)(1)(i) through (iii) of this section.

(i) Using the continuous opacity monitoring system (COMS) required in § 63.9631(d)(1), measure and record the opacity of emissions from each control device stack during the particulate matter performance test.

(ii) Compute and record the 6-minute opacity averages from 24 or more data points equally spaced over each 6-minute period (*e.g.*, at 15-second intervals) during the test runs.

(iii) Using the opacity measurements from a performance test that meets the emission limit, determine the opacity value corresponding to the 99 percent upper confidence level of a normal distribution of the 6-minute opacity averages.

(2) If the operating limit for your dry electrostatic precipitator is the daily average secondary voltage and daily average secondary current for each field, then you must follow the requirements in paragraphs (c)(2)(i) and (ii) of this section.

(i) Using the CPMS required in § 63.9631(d)(2), measure and record the secondary voltage and secondary current for each dry electrostatic precipitator field every 15 minutes during each run of the particulate matter performance test.

(ii) Calculate and record the average secondary voltage and secondary current for each dry electrostatic precipitator field for each individual test run. Your operating limits are established as the lowest average secondary voltage and secondary current value for each dry electrostatic precipitator field corresponding to any of the three test runs.

(d) For a wet electrostatic precipitator subject to performance testing in § 63.9620 and operating limit in § 63.9590(b)(4), you must establish a site-specific operating limit according to the procedures in paragraphs (d)(1) and (2) of this section.

(1) Using the CPMS required in § 63.9631(e), measure and record the parametric values in paragraphs (d)(1)(i) through (iii) of this section for each wet electrostatic precipitator field every 15 minutes during each run of the particulate matter performance test.

- (i) Secondary voltage;
- (ii) Water flow rate; and
- (iii) Stack outlet temperature.

(2) For each individual test run, calculate and record the average value for each operating parameter in paragraphs (d)(1)(i) through (iii) of this section for each wet electrostatic precipitator field. Your operating limits are established as the lowest average value for each operating parameter corresponding to any of the three test runs.

(e) If you use an air pollution control device other than a wet scrubber, dynamic wet scrubber, dry electrostatic precipitator, wet electrostatic precipitator, or baghouse, and it is subject to performance testing in § 63.9620, you must submit a site-specific monitoring plan in accordance with § 63.9631(f). The site-specific monitoring plan must include the site-specific procedures for demonstrating initial and continuous compliance with the corresponding operating limits.

(f) You may change the operating limits for any air pollution control device as long as you meet the requirements in paragraphs (f)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your request to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate compliance with the applicable emission limitation in Table 1 to this subpart.

(3) Establish revised operating limits according to the applicable procedures in paragraphs (a) through (e) of this section.

§ 63.9623 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission limit in Table 1 to this subpart, you must demonstrate initial compliance by meeting the emission limit requirements in paragraphs (a)(1) through (4) of this section.

(1) For ore crushing and handling, the flow-weighted mean concentration of particulate matter, determined according to the procedures in §§ 63.9620(a) and 63.9621(b), must not exceed the emission limits in Table 1 to this subpart.

(2) For indurating furnaces, the flow-weighted mean concentration of particulate matter, determined according to the procedures in §§ 63.9620(b) and 63.9621(c), must not exceed the emission limits in Table 1 to this subpart.

(3) For finished pellet handling, the flow-weighted mean concentration of particulate matter, determined according to the procedures in §§ 63.9620(c) and 63.9621(b), must not exceed the emission limits in Table 1 to this subpart.

(4) For ore dryers, the flow-weighted mean concentration of particulate matter, determined according to the procedures in §§ 63.9620(d) and 63.9621(c), must not exceed the emission limits in Table 1 to this subpart.

(b) For each affected source subject to an emission limit in Table 1 to this subpart, you must demonstrate initial compliance by meeting the operating limit requirements in paragraphs (b)(1) through (5) of this section.

(1) For each wet scrubber subject to performance testing in § 63.9620 and operating limits for pressure drop and scrubber water flow rate in § 63.9590(b)(1), you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.9622(a).

(2) For each dynamic wet scrubber subject to performance testing in § 63.9620 and operating limits for scrubber water flow rate and either fan amperage or pressure drop in § 63.9590(b)(2), you have established appropriate site-specific operating limits and have a record of the scrubber water flow rate and either the fan amperage or pressure drop value, measured during the performance test in accordance with § 63.9622(b).

(3) For each dry electrostatic precipitator subject to performance testing in § 63.9620 and one of the operating limits in § 63.9590(b)(3), you

must meet the requirements in paragraph (b)(3)(i) or (ii) of this section.

(i) If you are subject to the operating limit for opacity in § 63.9590(b)(3)(i), you have established appropriate site-specific operating limits and have a record of the opacity measured during the performance test in accordance with § 63.9622(c)(1).

(ii) If you are subject to the operating limit for secondary voltage and secondary current in § 63.9590(b)(3)(ii), you have established appropriate site-specific operating limits and have a record of the secondary voltage and secondary current measured during the performance test in accordance with § 63.9622(c)(2).

(4) For each wet electrostatic precipitator subject to performance testing in § 63.9620 and operating limits for secondary voltage, water flow rate, and stack outlet temperature in § 63.9590(b)(4), you have established appropriate site-specific operating limits and have a record of the secondary voltage, water flow rate, and stack outlet temperature measured during the performance test in accordance with § 63.9622(d).

(5) For other air pollution control devices subject to performance testing in § 63.9620 and operating limits in accordance with § 63.9590(b)(5), you have submitted a site-specific monitoring plan in accordance with § 63.9631(f) and have a record of the site-specific operating limits as measured during the performance test in accordance with § 63.9622(e).

(c) For each emission limitation and operating limit that applies to you, you must submit a notification of compliance status according to § 63.9640(e).

§ 63.9624 How do I demonstrate initial compliance with the work practice standards that apply to me?

You must demonstrate initial compliance with the work practice standards by meeting the requirements in paragraphs (a) through (c) of this section.

(a) You must prepare a fugitive dust emissions control plan in accordance with the requirements in § 63.9591.

(b) You must submit to the Administrator the fugitive dust emissions control plan in accordance with the requirements in § 63.9591.

(c) You must implement each control practice according to the procedures specified in your fugitive dust emissions control plan.

§ 63.9625 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

For each air pollution control device subject to operating limits in § 63.9590(b), you have demonstrated initial compliance if you meet all of the requirements in paragraphs (a) through (d) of this section.

(a) You have prepared the operation and maintenance plan for air pollution control devices in accordance with § 63.9600(b).

(b) You have operated each air pollution control device according to the procedures in the operation and maintenance plan.

(c) You have submitted a notification of compliance status according to the requirements in § 63.9640(e).

(d) You have prepared a site-specific monitoring plan in accordance with § 63.9632(b).

Continuous Compliance Requirements

§ 63.9630 When must I conduct subsequent performance tests?

(a) You must conduct subsequent performance tests to demonstrate continued compliance with the ore crushing and handling emission limits in Table 1 to this subpart according to the schedule developed by your permitting authority and shown in your title V permit. If a title V permit has not been issued, you must submit a testing plan and schedule, containing the information specified in paragraph (e) of this section, to the permitting authority for approval.

(b) You must conduct subsequent performance tests on all stacks associated with indurating furnaces to demonstrate continued compliance with the indurating furnace emission limits in Table 1 to this subpart according to the schedule developed by your permitting authority and shown in your title V permit, but no less frequent than twice per 5-year permit term. If a title V permit has not been issued, you must submit a testing plan and schedule, containing the information specified in paragraph (e) of this section, to the permitting authority for approval. For indurating furnaces with multiple stacks, the performance tests for all stacks associated with that indurating furnace must be conducted within a reasonable period of time, such that the indurating furnace operating characteristics remain representative for the duration of the stack tests.

(c) You must conduct subsequent performance tests to demonstrate continued compliance with the finished pellet handling emission limits in Table 1 to this subpart according to the

schedule developed by your permitting authority and shown in your title V permit. If a title V permit has not been issued, you must submit a testing plan and schedule, containing the information specified in paragraph (e) of this section, to the permitting authority for approval.

(d) You must conduct subsequent performance tests on all stacks associated with ore dryers to demonstrate continued compliance with the ore dryer emission limits in Table 1 to this subpart according to the schedule developed by your permitting authority and shown in your title V permit. If a title V permit has not been issued, you must submit a testing plan and schedule, containing the information specified in paragraph (e) of this section, to the permitting authority for approval. For ore dryers with multiple stacks, the performance tests for all stacks associated with an ore dryer must be conducted within a reasonable period of time, such that the ore dryer operating characteristics remain representative for the duration of the stack tests.

(e) If your plant does not have a title V permit, you must submit a testing plan for subsequent performance tests as required in paragraphs (a) through (d) of this section. This testing plan must be submitted to the Administrator on or before the compliance date that is specified in § 63.9583. The testing plan must contain the information specified in paragraphs (e)(1) and (2) of this section. You must maintain a current copy of the testing plan onsite, and it must be available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

(1) A list of all emission units.

(2) A schedule indicating when you will conduct subsequent performance tests for particulate matter for each of the emission units.

§ 63.9631 What are my monitoring requirements?

(a) For each baghouse applied to meet any particulate matter emission limit in Table 1 to this subpart, you must install, operate, and maintain a bag leak detection system to monitor the relative change in particulate matter loadings according to the requirements in § 63.9632(a), and conduct inspections at their specified frequencies according to the requirements in paragraphs (a)(1) through (8) of this section.

(1) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range.

(2) Confirm that dust is being removed from hoppers through weekly visual inspections or other means of ensuring the proper functioning of removal mechanisms.

(3) Check the compressed air supply of pulse-jet baghouses each day.

(4) Monitor cleaning cycles to ensure proper operation using an appropriate methodology.

(5) Check bag cleaning mechanisms for proper functioning through monthly visual inspections or equivalent means.

(6) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (knead or bent) or lying on their sides. You do not have to make this check for shaker-type baghouses that have self-tensioning (spring-loaded) devices.

(7) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks.

(8) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(b) Except as provided in paragraph (c) of this section, for each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.9590(b)(1), you must install, operate, and maintain a CPMS according to the requirements in § 63.9632(b) through (e) and monitor the daily average pressure drop and daily average scrubber water flow rate according to the requirements in § 63.9633.

(c) For each dynamic wet scrubber subject to the scrubber water flow rate and either the fan amperage or pressure drop operating limits in § 63.9590(b)(2), you must install, operate, and maintain a CPMS according to the requirements in § 63.9632(b) through (e) and monitor the daily average scrubber water flow rate and either the daily average fan amperage or the daily average pressure drop according to the requirements in § 63.9633.

(d) For each dry electrostatic precipitator subject to the operating limits in § 63.9590(b)(3), you must follow the monitoring requirements in paragraph (d)(1) or (2) of this section.

(1) If the operating limit you choose to monitor is the 6-minute average opacity of emissions in accordance with § 63.9590(b)(3)(i), you must install, operate, and maintain a COMS according to the requirements in § 63.9632(f) and monitor the 6-minute average opacity of emissions exiting each control device stack according to the requirements in § 63.9633.

(2) If the operating limit you choose to monitor is average secondary voltage and average secondary current for each dry electrostatic precipitator field in accordance with § 63.9590(b)(3)(ii), you must install, operate, and maintain a CPMS according to the requirements in § 63.9632(b) through (e) and monitor the daily average secondary voltage and daily average secondary current according to the requirements in § 63.9633.

(e) For each wet electrostatic precipitator subject to the operating limits in § 63.9590(b)(4), you must install, operate, and maintain a CPMS according to the requirements in § 63.9632(b) through (e) and monitor the daily average secondary voltage, daily average stack outlet temperature, and daily average water flow rate according to the requirements in § 63.9633.

(f) If you use any air pollution control device other than a baghouse, wet scrubber, dry electrostatic precipitator, or wet electrostatic precipitator, you must submit a site-specific monitoring plan that includes the information in paragraphs (f)(1) through (4) of this section. The monitoring plan is subject to approval by the Administrator. You must maintain a current copy of the monitoring plan onsite, and it must be available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

(1) A description of the device.

(2) Test results collected in accordance with § 63.9621 verifying the performance of the device for reducing emissions of particulate matter to the atmosphere to the levels required by this subpart.

(3) A copy of the operation and maintenance plan required in § 63.9600(b).

(4) Appropriate operating parameters that will be monitored to maintain continuous compliance with the applicable emission limitation(s).

§ 63.9632 What are the installation, operation, and maintenance requirements for my monitoring equipment?

(a) For each negative pressure baghouse or positive pressure baghouse equipped with a stack, applied to meet any particulate emission limit in Table 1 to this subpart, you must install, operate, and maintain a bag leak detection system according to the requirements in paragraphs (a)(1) through (8) of this section.

(1) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per

actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The system must provide output of relative changes in particulate matter loadings.

(3) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over the alarm level set point established according to paragraph (a)(4) of this section. The alarm must be located such that it can be heard by the appropriate plant personnel.

(4) For each bag leak detection system, you must develop and submit to the Administrator for approval, a site-specific monitoring plan that addresses the items identified in paragraphs (a)(4)(i) through (v) of this section. For each bag leak detection system that operates based on the triboelectric effect, the monitoring plan shall be consistent with the recommendations contained in the U.S. Environmental Protection Agency (U.S. EPA) guidance document, "Fabric Filter Bag Leak Detection Guidance" (EPA-454/R-98-015). This document is available on the EPA's Technology Transfer Network at <http://www.epa.gov/ttn/emc/cem/tribo.pdf> (Adobe Acrobat version) or <http://www.epa.gov/ttn/emc/cem/tribo.wpd> (WordPerfect version). You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. The plan shall describe all of the items in paragraphs (a)(4)(i) through (v) of this section.

(i) Installation of the bag leak detection system.

(ii) Initial and periodic adjustment of the bag leak detection system including how the alarm set-point will be established.

(iii) Operation of the bag leak detection system including quality assurance procedures.

(iv) How the bag leak detection system will be maintained including a routine maintenance schedule and spare parts inventory list.

(v) How the bag leak detection system output shall be recorded and stored.

(5) To make the initial adjustment of the system, establish the baseline output by adjusting the sensitivity (range) and the averaging period of the device. Then, establish the alarm set points and the alarm delay time (if applicable).

(6) Following initial adjustment, do not adjust averaging period, alarm set point, or alarm delay time, without approval from the Administrator except as provided for in paragraph (a)(6)(i) of this section.

(i) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects,

including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required under paragraph (a)(4) of this section.

(ii) [Reserved]

(7) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(8) The bag leak detector sensor must be installed downstream of the baghouse and upstream of any wet scrubber.

(b) For each CPMS required in § 63.9631, you must develop and make available for inspection upon request by the permitting authority a site-specific monitoring plan that addresses the requirements in paragraphs (b)(1) through (7) of this section.

(1) Installation of the CPMS sampling probe or other interface at a measurement location relative to each affected emission unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device).

(2) Performance and equipment specifications for the sample interface, the parametric signal analyzer, and the data collection and reduction system.

(3) Performance evaluation procedures and acceptance criteria (e.g., calibrations).

(4) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (3), (4)(ii), (7), and (8).

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d).

(6) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(7) Corrective action procedures that you will follow in the event an air pollution control device, except for a baghouse, exceeds an established operating limit as required in § 63.9600(b)(3).

(c) Unless otherwise specified, each CPMS must meet the requirements in paragraphs (c)(1) and (2) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 15-minute period and must have valid data for at least 95 percent of every daily averaging period.

(2) Each CPMS must determine and record the daily average of all recorded readings.

(d) You must conduct a performance evaluation of each CPMS in accordance with your site-specific monitoring plan.

(e) You must operate and maintain the CPMS in continuous operation

according to the site-specific monitoring plan.

(f) For each dry electrostatic precipitator subject to the opacity operating limit in § 63.9590(b)(3)(i), you must install, operate, and maintain each COMS according to the requirements in paragraphs (f)(1) through (4) of this section.

(1) You must install each COMS and conduct a performance evaluation of each COMS according to § 63.8 and Performance Specification 1 in appendix B to 40 CFR part 60.

(2) You must develop and implement a quality control program for operating and maintaining each COMS according to § 63.8. At a minimum, the quality control program must include a daily calibration drift assessment, quarterly performance audit, and annual zero alignment of each COMS.

(3) You must operate and maintain each COMS according to § 63.8(e) and your quality control program. You must also identify periods the COMS is out of control, including any periods that the COMS fails to pass a daily calibration drift assessment, quarterly performance audit, or annual zero alignment audit.

(4) You must determine and record the 6-minute average opacity for periods during which the COMS is not out of control.

§ 63.9633 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times an affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, or to fulfill a minimum data availability requirement. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not considered malfunctions.

§ 63.9634 How do I demonstrate continuous compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission limit in Table 1 to this subpart, you must demonstrate continuous compliance by meeting the requirements in paragraphs (b) through (f) of this section.

(b) For ore crushing and handling affected sources and finished pellet handling affected sources, you must demonstrate continuous compliance by meeting the requirements in paragraphs (b)(1) through (3) of this section.

(1) The flow-weighted mean concentration of particulate matter for all ore crushing and handling emission units and for all finished pellet handling emission units must be maintained at or below the emission limits in Table 1 to this subpart.

(2) You must conduct subsequent performance tests for emission units in the ore crushing and handling and finished pellet handling affected sources following the schedule in your title V permit. If a title V permit has not been issued, you must conduct subsequent performance tests according to a testing plan approved by the Administrator or delegated authority.

(3) For emission units not selected for initial performance testing and defined within a group of similar emission units in accordance with § 63.9620(e), you must calculate the daily average value of each operating parameter for the similar air pollution control device applied to each similar emission unit within a defined group using Equation 1 of this section.

$$P_k = \frac{\sum_{i=1}^n P_i}{n} \quad (\text{Eq. 1})$$

Where:

P_k = Daily average operating parameter value for all emission units within group "k";

P_i = Daily average parametric monitoring parameter value corresponding to emission unit "i" within group "k"; and

n = Total number of emission units within group, including emission units that have been selected for performance tests and those that have not been selected for performance tests.

(c) For ore dryers and indurating furnaces, you must demonstrate continuous compliance by meeting the requirements in paragraphs (c)(1) and (2) of this section.

(1) The flow-weighted mean concentration of particulate matter for all stacks from the ore dryer or indurating furnace must be maintained at or below the emission limits in Table 1 to this subpart.

(2) For ore dryers, you must conduct subsequent performance tests following the schedule in your title V permit. For indurating furnaces, you must conduct subsequent performance tests following the schedule in your title V permit, but no less frequent than twice per 5-year permit term. If a title V permit has not been issued, you must conduct subsequent performance tests according to a testing plan approved by the Administrator or delegated authority.

(d) For each baghouse applied to meet any particulate emission limit in Table 1 to this subpart, you must demonstrate continuous compliance by completing the requirements in paragraphs (d)(1) and (2) of this section.

(1) Maintaining records of the time you initiated corrective action in the event of a bag leak detection system alarm, the corrective action(s) taken, and the date on which corrective action was completed.

(2) Inspecting and maintaining each baghouse according to the requirements in § 63.9631(a)(1) through (8) and recording all information needed to document conformance with these requirements. If you increase or decrease the sensitivity of the bag leak detection system beyond the limits specified in your site-specific monitoring plan, you must include a copy of the required written certification by a responsible official in the next semiannual compliance report.

(e) Except as provided in paragraph (f) of this section, for each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.9590(b)(1), you must demonstrate continuous compliance by completing the requirements of paragraphs (e)(1) through (4) of this section.

(1) Maintaining the daily average pressure drop and daily average scrubber water flow rate at or above the minimum levels established during the initial or subsequent performance test.

(2) Operating and maintaining each wet scrubber CPMS according to § 63.9632(b) and recording all information needed to document conformance with these requirements.

(3) Collecting and reducing monitoring data for pressure drop and scrubber water flow rate according to § 63.9632(c) and recording all information needed to document conformance with these requirements.

(4) If the daily average pressure drop or daily average scrubber water flow rate is below the operating limits established for a corresponding emission unit or group of similar emission units, you must then follow the corrective action

procedures in paragraph (j) of this section.

(f) For each dynamic wet scrubber subject to the operating limits for scrubber water flow rate and either the fan amperage or pressure drop in § 63.9590(b)(2), you must demonstrate continuous compliance by completing the requirements of paragraphs (f)(1) through (4) of this section.

(1) Maintaining the daily average scrubber water flow rate and either the daily average fan amperage or the daily average pressure drop at or above the minimum levels established during the initial or subsequent performance test.

(2) Operating and maintaining each dynamic wet scrubber CPMS according to § 63.9632(b) and recording all information needed to document conformance with these requirements.

(3) Collecting and reducing monitoring data for scrubber water flow rate and either fan amperage or pressure drop according to § 63.9632(c) and recording all information needed to document conformance with these requirements.

(4) If the daily average scrubber water flow rate, daily average fan amperage, or daily average pressure drop is below the operating limits established for a corresponding emission unit or group of similar emission units, you must then follow the corrective action procedures in paragraph (j) of this section.

(g) For each dry electrostatic precipitator subject to operating limits in § 63.9590(b)(3), you must demonstrate continuous compliance by completing the requirements of paragraph (g)(1) or (2) of this section.

(1) If the operating limit for your dry electrostatic precipitator is a 6-minute average opacity of emissions value, then you must follow the requirements in paragraphs (g)(1)(i) through (iii) of this section.

(i) Maintaining the 6-minute average opacity of emissions at or below the maximum level established during the initial or subsequent performance test.

(ii) Operating and maintaining each COMS and reducing the COMS data according to § 63.9632(f).

(iii) If the 6-minute average opacity of emissions is above the operating limits established for a corresponding emission unit, you must then follow the corrective action procedures in paragraph (j) of this section.

(2) If the operating limit for your dry electrostatic precipitator is the daily average secondary voltage and daily average secondary current for each field, then you must follow the requirements in paragraphs (g)(2)(i) through (iv) of this section.

(i) Maintaining the daily average secondary voltage or daily average secondary current for each field at or above the minimum levels established during the initial or subsequent performance test.

(ii) Operating and maintaining each dry electrostatic precipitator CPMS according to § 63.9632(b) and recording all information needed to document conformance with these requirements.

(iii) Collecting and reducing monitoring data for secondary voltage or secondary current for each field according to § 63.9632(c) and recording all information needed to document conformance with these requirements.

(iv) If the daily average secondary voltage or daily average secondary current for each field is below the operating limits established for a corresponding emission unit, you must then follow the corrective action procedures in paragraph (j) of this section.

(h) For each wet electrostatic precipitator subject to the operating limits for secondary voltage, stack outlet temperature, and water flow rate in § 63.9590(b)(4), you must demonstrate continuous compliance by completing the requirements of paragraphs (h)(1) through (4) of this section.

(1) Maintaining the daily average secondary voltage, daily average secondary current, and daily average scrubber water flow rate for each field at or above the minimum levels established during the initial or subsequent performance test. Maintaining the daily average stack outlet temperature at or below the maximum levels established during the initial or subsequent performance test.

(2) Operating and maintaining each wet electrostatic precipitator CPMS according to § 63.9632(b) and recording all information needed to document conformance with these requirements.

(3) Collecting and reducing monitoring data for secondary voltage, stack outlet temperature, and water flow rate according to § 63.9632(c) and recording all information needed to document conformance with these requirements.

(4) If the daily average secondary voltage, stack outlet temperature, or water flow rate does not meet the operating limits established for a corresponding emission unit, you must then follow the corrective action procedures in paragraph (j) of this section.

(i) If you use an air pollution control device other than a wet scrubber, dynamic wet scrubber, dry electrostatic precipitator, wet electrostatic precipitator, or baghouse, you must

submit a site-specific monitoring plan in accordance with § 63.9631(f). The site-specific monitoring plan must include the site-specific procedures for demonstrating initial and continuous compliance with the corresponding operating limits.

(j) If the daily average operating parameter value for an emission unit or group of similar emission units does not meet the corresponding established operating limit, you must then follow the procedures in paragraphs (j)(1) through (4) of this section.

(1) You must initiate and complete initial corrective action within 10 calendar days and demonstrate that the initial corrective action was successful. During any period of corrective action, you must continue to monitor and record all required operating parameters for equipment that remains in operation. After 10 calendar days, measure and record the daily average operating parameter value for the emission unit or group of similar emission units on which corrective action was taken. After the initial corrective action, if the daily average operating parameter value for the emission unit or group of similar emission units meets the operating limit established for the corresponding unit or group, then the corrective action was successful and the emission unit or group of similar emission units is in compliance with the established operating limits.

(2) If the initial corrective action required in paragraph (j)(1) of this section was not successful, then you must complete additional corrective action within 10 calendar days and demonstrate that the subsequent corrective action was successful. During any period of corrective action, you must continue to monitor and record all required operating parameters for equipment that remains in operation. After the second set of 10 calendar days allowed to implement corrective action, you must again measure and record the daily average operating parameter value for the emission unit or group of similar emission units. If the daily average operating parameter value for the emission unit or group of similar emission units meets the operating limit established for the corresponding unit or group, then the corrective action was successful and the emission unit or group of similar emission units is in compliance with the established operating limits.

(3) If the second attempt at corrective action required in paragraph (j)(2) of this section was not successful, then you must repeat the procedures of paragraph (j)(2) of this section until the corrective action is successful. If the

third attempt at corrective action is unsuccessful, you must conduct another performance test in accordance with the procedures in § 63.9622(f) and report to the Administrator as a deviation the third unsuccessful attempt at corrective action.

(4) After the third unsuccessful attempt at corrective action, you must submit to the Administrator the written report required in paragraph (j)(3) of this section within 5 calendar days after the third unsuccessful attempt at corrective action. This report must notify the Administrator that a deviation has occurred and document the types of corrective measures taken to address the problem that resulted in the deviation of established operating parameters and the resulting operating limits.

§ 63.9635 How do I demonstrate continuous compliance with the work practice standards that apply to me?

(a) You must demonstrate continuous compliance with the work practice standard requirements in § 63.9591 by operating in accordance with your fugitive dust emissions control plan at all times.

(b) You must maintain a current copy of the fugitive dust emissions control plan required in § 63.9591 onsite and it must be available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

§ 63.9636 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each control device subject to an operating limit in § 63.9590(b), you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.9600(b) by completing the requirements of paragraphs (a)(1) through (4) of this section.

(1) Performing preventative maintenance for each control device in accordance with § 63.9600(b)(1) and recording all information needed to document conformance with these requirements;

(2) Initiating and completing corrective action for a bag leak detection system alarm in accordance with § 63.9600(b)(2) and recording all information needed to document conformance with these requirements;

(3) Initiating and completing corrective action for a CPMS when you exceed an established operating limit for an air pollution control device except for a baghouse in accordance with § 63.9600(b)(3) and recording all information needed to document

conformance with these requirements; and

(4) Implementing and maintaining site-specific good combustion practices for each indurating furnace in accordance with § 63.9600(b)(4) and recording all information needed to document conformance with these requirements.

(b) You must maintain a current copy of the operation and maintenance plan required in § 63.9600(b) onsite, and it must be available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

§ 63.9637 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in Table 1 to this subpart that applies to you. This includes periods of startup, shutdown, and malfunction in accordance with paragraph (b) of this section. You also must report each instance in which you did not meet the work practice standards in § 63.9591 and each instance in which you did not meet each operation and maintenance requirement in § 63.9600 that applies to you. These instances are deviations from the emission limitations, work practice standards, and operation and maintenance requirements in this subpart. These deviations must be reported in accordance with the requirements in § 63.9641.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan and the requirements in paragraphs (b)(1) and (2) of this section.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.9640 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you start up your affected source before October 30, 2003, you must submit your initial notification no later than 120 calendar days after October 30, 2003.

(c) As specified in § 63.9(b)(3), if you start up your new affected source on or after October 30, 2003, you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii). The initial notification of compliance status must be submitted by the dates specified in paragraphs (e)(1) and (2) of this section.

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

§ 63.9641 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.9583 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your source in § 63.9583.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through

June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) *Compliance report contents.* Each compliance report must include the information in paragraphs (b)(1) through (3) of this section and, as applicable, in paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with the official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in §§ 63.9634 through 63.9636 that apply to you, then provide a statement that there were no deviations from the emission limitations, work practice standards, or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including a CPMS or COMS) was out-of-control as specified in § 63.8(c)(7), then provide a statement that there were no periods during which a continuous monitoring system was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in Table 1 to this subpart that occurs at an affected source where you are not using a continuous monitoring system (including a CPMS or COMS) to comply with an emission limitation in this subpart, the compliance report must contain the information in paragraphs (b)(1) through

(4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause) as applicable, and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a continuous monitoring system (including a CPMS or COMS) to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(8)(i) through (xi) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(c) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emission limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

(e) *Immediate corrective action report.* If you had three unsuccessful attempts of applying corrective action as described in § 63.9634(j) on an emission unit or group of emission units, then you must submit an immediate corrective action report. Within 5 calendar days after the third unsuccessful attempt at corrective action, you must submit to the Administrator a written report in accordance with § 63.9634(j)(3) and (4). This report must notify the Administrator that a deviation has occurred and document the types of corrective measures taken to address the problem that resulted in the deviation of established operating parameters and the resulting operating limits.

§ 63.9642 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) For each COMS, you must keep the records specified in paragraphs (b)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Monitoring data for COMS during a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (that is, superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required in §§ 63.9634 through 63.9636 to show continuous compliance with each emission limitation, work practice standard, and operation and maintenance requirement that applies to you.

§ 63.9643 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.9650 What parts of the General Provisions apply to me?

Table 2 to this subpart shows which parts of the General Provisions in § 63.1 through 63.15 apply to you.

§ 63.9651 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of non-opacity emission limitations and work practice standards under § 63.6(h)(9) and as defined in § 63.90.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9652 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows.

Affected source means each new or existing ore crushing and handling operation, ore dryer, indurating furnace, or finished pellet handling operation, at your taconite iron ore processing plant.

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Conveyor belt transfer point means a point in the conveying operation where the taconite ore or taconite pellets are transferred to or from a conveyor belt, except where the taconite ore or taconite pellets are being transferred to a bin or stockpile.

Crusher means a machine used to crush taconite ore and includes feeders or conveyors located immediately below the crushing surfaces. Crushers include, but are not limited to, gyratory crushers and cone crushers.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any

emission limitation (including operating limits) or operation and maintenance requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Dynamic wet scrubber means an air emissions control device which utilizes a mechanically powered fan to cause contact between the process exhaust gas stream and the scrubbing liquid which are introduced concurrently into the fan inlet.

Emission limitation means any emission limit, opacity limit, or operating limit.

Finished pellet handling means the transfer of fired taconite pellets from the indurating furnace to the finished pellet stockpiles at the plant. Finished pellet handling includes, but is not limited to, furnace discharge or grate discharge, and finished pellet screening, transfer, and storage. The atmospheric pellet cooler vent stack and gravity conveyor gallery vents designed to remove heat and water vapor from the structure are not included as a part of the finished pellet handling affected source.

Fugitive dust emission source means a stationary source from which particles are discharged to the atmosphere due to wind or mechanical inducement such as vehicle traffic. Fugitive dust sources include, but are not limited to:

(1) Stockpiles (includes, but is not limited to, stockpiles of uncrushed ore, crushed ore, or finished pellets);

(2) Material transfer points;

(3) Plant roadways;

(4) Tailings basins;

(5) Pellet loading areas; and

(6) Yard areas.

Grate feed means the transfer of unfired taconite pellets from the pelletizer into the indurating furnace.

Grate kiln indurating furnace means a furnace system that consists of a traveling grate, a rotary kiln, and an annular cooler. The grate kiln indurating furnace begins at the point where the grate feed conveyor discharges the green balls onto the furnace traveling grate and ends where the hardened pellets exit the cooler. The atmospheric pellet cooler vent stack is not included as part of the grate kiln indurating furnace.

Indurating means the process whereby unfired taconite pellets, called green balls, are hardened at high

temperature in an indurating furnace. Types of indurating furnaces include straight grate indurating furnaces and grate kiln indurating furnaces.

Ore crushing and handling means the process whereby dry taconite ore is crushed and screened. Ore crushing and handling includes, but is not limited to, all dry crushing operations (e.g., primary, secondary, and tertiary crushing), dry ore conveyance and transfer points, dry ore classification and screening, dry ore storage and stockpiling, dry milling, dry cobbing (i.e., dry magnetic separation), and the grate feed. Ore crushing and handling specifically excludes any operations where the dry crushed ore is saturated with water, such as wet milling and wet magnetic separation.

Ore dryer means a rotary dryer that repeatedly tumbles wet taconite ore concentrate through a heated air stream to reduce the amount of entrained moisture in the taconite ore concentrate.

Pellet cooler vent stacks means atmospheric vents in the cooler section of the grate kiln indurating furnace that exhaust cooling air that is not returned for recuperation. Pellet cooler vent stacks are not to be confused with the

cooler discharge stack, which is in the pellet loadout or dumping area.

Pellet loading area means that portion of a taconite iron ore processing plant where taconite pellets are loaded into trucks or railcars.

Responsible official means responsible official as defined in § 63.2.

Rod-deck venturi scrubber means a wet scrubber emission control device in which the inlet air flows through a bed of parallel metal pipes spaced apart to produce a series of parallel venturi throats.

Screen means a device for separating material according to size by passing undersize material through one or more mesh surfaces (screens) in series and retaining oversize material on the mesh surfaces (screens).

Storage bin means a facility for storage (including surge bins and hoppers) of taconite ore or taconite pellets prior to further processing or loading.

Straight grate indurating furnace means a furnace system that consists of a traveling grate that carries the taconite pellets through different furnace temperature zones. In the straight grate indurating furnace a layer of fired pellets, called the hearth layer, is placed

on the traveling grate prior to the addition of unfired pellets. The straight grate indurating furnace begins at the point where the grate feed conveyor discharges the green balls onto the furnace traveling grate and ends where the hardened pellets drop off of the traveling grate.

Taconite iron ore processing means the separation and concentration of iron ore from taconite, a low-grade iron ore, to produce taconite pellets.

Taconite ore means a low-grade iron ore suitable for concentration of magnetite or hematite by fine grinding and magnetic or flotation treatment, from which pellets containing iron can be produced.

Tailings basin means a natural or artificial impoundment in which gangue or other refuse material resulting from the washing, concentration or treatment of ground taconite iron ore is confined.

Wet grinding and milling means the process whereby wet taconite ore is finely ground using rod and/or ball mills.

Tables to Subpart RRRRR of Part 63

As required in § 63.9590(a), you must comply with each applicable emission limit in the following table:

TABLE 1 TO SUBPART RRRRR OF PART 63.—EMISSION LIMITS

If your affected source is . . .	and the affected source is categorized as . . .	then you must comply with the flow-weighted mean concentration of particulate matter discharged to the atmosphere from the affected source, as determined using the procedures in § 63.9621(b), such that you must not exceed . . .
1. Ore crushing and handling emission units	Existing	0.008 grains per dry standard cubic foot (gr/dscf).
	New	0.005 gr/dscf.
2. Straight grate indurating furnace processing magnetite	Existing	0.01 gr/dscf.
	New	0.006 gr/dscf.
3. Grate kiln indurating furnace processing magnetite	Existing	0.01 gr/dscf.
	New	0.006 gr/dscf.
4. Grate kiln indurating furnace processing hematite	Existing	0.03 gr/dscf.
	New	0.018 gr/dscf.
5. Finished pellet handling emission units	Existing	0.008 gr/dscf.
	New	0.005 gr/dscf.
6. Ore dryer	Existing	0.052 gr/dscf.
	New	0.025 gr/dscf.

As required in § 63.9650, you must comply with the requirements of the NESHAP General Provisions (40 CFR

part 63, subpart A) shown in the following table:

TABLE 2 TO SUBPART RRRRR OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRRR OF PART 63

Citation	Subject	Applies to Subpart RRRRR	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5	Construction/Reconstruction	Yes.	

TABLE 2 TO SUBPART RRRRR OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS—Continued
TO SUBPART RRRRR OF PART 63

Citation	Subject	Applies to Subpart RRRRR	Explanation
§ 63.6(a)–(g)	Compliance With Standards and Maintenance Requirements.	Yes.	
§ 63.6(h)	Compliance With Opacity and Visible Emission (VE) Standards.	No	Subpart RRRRR does not contain opacity and VE standards.
§ 63.6(i), (j)	Extension of Compliance and Presidential Compliance Extension.	Yes.	
§ 63.7(a)(1)–(2)	Applicability and Performance Test Dates.	No	Subpart RRRRR specifies performance test applicability and dates.
§ 63.7(a)(3), (b)–(h)	Performance Testing Requirements ..	Yes.	
§ 63.8(a)(1)–(a)(3), (b), (c)(1)–(3), (c)(5)–(8), (d), (e), (f)(1)–(5), (g)(1)–(4).	Monitoring Requirements	Yes	Continuous monitoring system (CMS) requirements in § 63.8(c)(5) and (6) apply only to COMS for dry electrostatic precipitators.
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Subpart RRRRR does not require flares.
§ 63.8(c)(4)	Continuous Monitoring System Requirements.	No	Subpart RRRRR specifies requirements for operation of CMS.
§ 63.8(f)(6)	Relative Accuracy Test Alternative (RATA).	No	Subpart RRRRR does not require continuous emission monitoring systems.
§ 63.8(g)(5)	Data Reduction	No	Subpart RRRRR specifies data reduction requirements.
§ 63.9	Notification Requirements	Yes	Additional notifications for CMS in § 63.9(g) apply to COMS for dry electrostatic precipitators.
§ 63.10(a), (b)(1)–(2)(xii), (b)(2)(xiv), (b)(3), (c)(1)–(6), (c)(9)–(15), (d)(1)–(2), (d)(4)–(5), (e), (f).	Recordkeeping and Reporting Requirements.	Yes	Additional records for CMS in § 63.10(c)(1)–(6), (9)–(15), and reports in § 63.10(d)(1)–(2) apply only to COMS for dry electrostatic precipitators.
§ 63.10(b)(2)(xiii)	CMS Records for RATA Alternative ...	No	Subpart RRRRR doesn't require continuous emission monitoring systems.
§ 63.10(c)(7)–(8)	Records of Excess Emissions and Parameter Monitoring Exceedances for CMS.	No	Subpart RRRRR specifies record requirements.
§ 63.10(d)(3)	Reporting opacity or VE observations	No	Subpart RRRRR does not have opacity and VE standards.
§ 63.11	Control Device Requirements	No	Subpart RRRRR does not require flares.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13–§ 63.15	Addresses, Incorporation by Reference, Availability of Information.	Yes.	

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**Thursday,
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Part III

Department of Transportation

Research and Special Programs Administration

**49 CFR Parts 171, 173, 174, et al.
Applicability of the Hazardous Materials
Regulations to Loading, Unloading, and
Storage; Final Rule**

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 171, 173, 174, 175, 176, 177, and 178****[Docket No. RSPA-98-4952 (HM-223)]****RIN 2137-AC68****Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

SUMMARY: RSPA is clarifying the applicability of the Hazardous Materials Regulations (HMR) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. We are also listing in the HMR pre-transportation functions to which the HMR apply. Pre-transportation functions are functions performed to prepare hazardous materials for transportation in commerce by persons who offer a hazardous material for transportation or cause a hazardous material to be transported. Transportation functions are functions performed as part of the actual movement of hazardous materials in commerce, including loading, unloading, and storage of hazardous materials that is incidental to that movement. For purposes of applicability of the HMR, "transportation in commerce" begins when a carrier takes possession of a hazardous material and continues until the carrier delivers the package containing the hazardous material to its destination as indicated on shipping papers or other shipping documentation.

DATES: This final rule is effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Gorsky (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or Donna O'Berry (202) 366-4400, Office of the Chief Counsel, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:**List of Topics**

- I. Background
- II. Summary of Final Rule
- III. Analysis of Comments
 - A. Packaging Specifications
 - B. Pre-Transportation Functions
 - C. Transportation that is "in Commerce"

- D. Transportation Functions Subject to the HMR
- E. State/Local Requirements and Preemption
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I. Background

Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) are promulgated under the mandate in section 5103(b) of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*, as amended by section 1711 of the Homeland Security Act of 2002, Pub. L. 107-296) that the Secretary of Transportation "prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce." Section 5103(b)(1)(B) provides that the HMR "shall govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate."

"Transportation" is defined as "the movement of property and loading, unloading, or storage incidental to the movement." 49 U.S.C. 5102(12). "Commerce" is defined as "trade or transportation in the jurisdiction of the United States between a place in a State and a place outside of the State; or that affects trade or transportation between a place in a State and a place outside of the State." 49 U.S.C. 5102(1). Neither the statute nor the HMR define the terms "loading incidental to movement," "unloading incidental to movement," or "storage incidental to movement." The legislative history of the statute does not clarify this matter.

On June 14, 2001, the Research and Special Programs Administration (RSPA, we) issued a notice of proposed rulemaking (NPRM; 66 FR 32420) proposing to clarify the applicability of the HMR to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. The proposals in the NPRM were based on previously issued administrative determinations as to the applicability of the HMR, including informal letters of interpretation, formal interpretations published in the **Federal**

Register, inconsistency rulings, and preemption determinations. In the NPRM, we proposed to key the definition of "transportation in commerce" to a carrier's possession of a hazardous materials shipment. As we stated in the NPRM, we believe this approach is most consistent with the intent of Federal hazmat law and with other Federal statutes governing the regulation of hazardous materials at fixed facilities.

As we explained in the NPRM, using this approach, the HMR would continue to apply, as they do now, to certain activities performed by offerors to prepare a hazardous material for transportation. We proposed a new term to describe these activities—"pre-transportation functions." These are functions that affect the safe movement of hazardous materials during transportation. "Transportation in commerce" would begin when a carrier takes physical possession of a hazardous materials package or shipment for purposes of transporting it and would continue until delivery of the package to its consignee or destination as evidenced by the shipping documentation under which the hazardous material is moving, such as shipping papers, bills of lading, freight orders, or similar documentation. The HMR would apply to all carrier activities after the carrier takes possession of the hazardous material from an offeror for purposes of transporting it until the package is delivered to its destination, including loading and unloading activities conducted by carrier personnel. We proposed that, for purposes of the HMR, such activities would be considered loading or unloading "incidental to movement." In addition, the HMR would apply to storage of a hazardous materials package by any party between the time that a carrier takes possession of the hazardous material for purposes of transporting it until the package is delivered to its intended destination, as evidenced by the shipping documentation under which the package is moving. Except for rail cars stored on leased track, we proposed that such storage would be considered storage "incidental to movement." We proposed and requested comment on two alternatives for applying the HMR to rail cars stored on leased track in certain circumstances.

In addition, the NPRM described the statutory authorities and associated regulatory programs of the Department of Labor's Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) and explained their applicability to

operations at fixed facilities involving hazardous materials. The NPRM indicated that facilities at which functions regulated by the HMR occur might also be subject to applicable OSHA and/or EPA regulations. Finally, the NPRM discussed the preemption provisions of Federal hazmat law and indicated that facilities at which functions regulated by the HMR occur may also be subject to laws and regulations of state, local, or tribal governments.

II. Summary of Final Rule

This final rule amends the HMR to incorporate the following new definitions and provisions:

- We are defining a new term—"pre-transportation function"—to mean a function performed by any person that is required to assure the safe transportation of a hazardous material in commerce. When performed by shipper personnel, loading of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel and filling a bulk packaging with hazardous material in the absence of a carrier for the purpose of transporting it is a pre-transportation function as that term is defined in this final rule. Pre-transportation functions must be performed in accordance with requirements in the HMR.

- We are defining "transportation" to mean the movement of property and loading, unloading, or storage incidental to the movement. This definition is consistent with the definition of "transportation" in Federal hazmat law. Transportation in commerce begins when a carrier takes physical possession of a hazardous material for the purpose of transporting it and continues until delivery of the package to its consignee or destination as evidenced by the shipping documentation under which the hazardous material is moving, such as shipping papers, bills of lading, freight orders, or similar documentation.

- We are defining "movement" to mean the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel.

- We are defining "loading incidental to movement" to mean the loading by carrier personnel or in the presence of carrier personnel of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel for the purpose of transporting it. For a bulk packaging, "loading incidental to movement" means the filling of the packaging with a hazardous material by carrier personnel or in the presence of carrier personnel for the purpose of transporting it. Loading incidental to

movement is regulated under the HMR. Note, however, that, as discussed elsewhere in this preamble, OSHA shares jurisdiction for certain aspects of the loading operation.

- We are defining "unloading incidental to movement" to mean the removal of a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel or the emptying of a hazardous material from a bulk packaging after a hazardous material has been delivered to a consignee and prior to the delivering carrier's departure from the consignee facility or premises. Unloading incidental to movement is subject to regulation under the HMR. Note, however, that, as discussed elsewhere in this preamble, OSHA shares jurisdiction for certain aspects of the unloading operation. Unloading by a consignee after the delivering carrier has departed the facility is not unloading incidental to movement and not regulated under the HMR.

- We are defining "storage incidental to movement" to mean storage by any person of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document. However, in the case of railroad shipments, even if a shipment has been delivered to the destination shown on the shipping document, if the track is under the control of a railroad carrier or track is used for purposes other than moving cars shipped to or from the lessee, storage on the track is storage incidental to movement. We have revised the definition of "private track or private siding" to make this clear. Storage at a shipper facility prior to a carrier exercising control over or taking possession of the hazardous material or storage at a consignee facility after a carrier has delivered the hazardous material is not storage incidental to movement and is not regulated under the HMR.

- We are amending § 171.1 of the HMR to list regulated and non-regulated functions. Regulated functions include: (1) Activities related to the design, manufacture, and qualification of packaging represented as qualified for use in the transportation of hazardous materials; (2) pre-transportation functions; and (3) transportation functions (movement of a hazardous material and loading, unloading, and storage incidental to the movement). Non-regulated functions include: (1)

Rail and motor vehicle movements of a hazardous material solely within a contiguous facility where public access is restricted; (2) transportation of a hazardous material in a transport vehicle or conveyance operated by a Federal, state, or local government employee solely for government purposes; (3) transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle; and (4) any matter subject to U.S. postal laws and regulations.

- We are amending § 171.1 of the HMR to indicate that facilities at which functions are performed in accordance with the HMR may be subject to applicable standards and regulations of other Federal agencies or to applicable state or local government laws and regulations (except to the extent that such non-Federal requirements may be preempted under Federal hazmat law). Federal hazmat law does not preempt other Federal statutes nor does it preempt regulations issued by other Federal agencies to implement statutorily authorized programs. This final rule is intended to clarify the applicability of the HMR to specific functions and activities. It is not appropriate for DOT to attempt to clarify the applicability of other Federal agencies' statutes or regulations to particular functions or activities. However, it is important to note that facilities at which pre-transportation or transportation functions are performed must comply with OSHA and state or local regulations applicable to physical structures—for example, noise and air quality control standards, emergency preparedness, fire codes, and local zoning requirements. Facilities may also have to comply with applicable state and local regulations for hazardous materials handling and storage operations. Facilities at which pre-transportation or transportation functions are performed may also be subject to EPA and other OSHA regulations. For example, facilities may be subject to EPA's risk management; community right-to-know; hazardous waste tracking and disposal; and spill prevention, control and countermeasure requirements, and OSHA's process safety management and emergency preparedness requirements. Similarly, facilities at which pre-transportation functions are performed may also be subject to regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) concerning the handling of explosives. Questions as to the applicability of EPA, OSHA, or ATF regulations to particular facilities or

operations should be directed to the appropriate EPA, OSHA, or ATF office.

The provisions of this final rule are explained in more detail in the following preamble discussion.

III. Analysis of Comments

We received more than 120 comments on the NPRM. Commenters included representatives of individual shippers and carriers, industry trade associations, state and local governments, and the National Transportation Safety Board (NTSB). Most commenters express support for the goals of this rulemaking, but oppose many of the specific proposals in the NPRM. Generally, industry commenters express concern that the NPRM appears to contradict one of the major goals of Federal hazmat law—establishment of uniform national regulations for the safe transportation in commerce of hazardous materials. On the other hand, commenters representing state and local governments generally support the NPRM proposals. The comments are discussed in detail below.

Several commenters submitted comments that are outside of the scope of this rulemaking. For example, one commenter wants us to eliminate any regulation that allows shippers to prepare and load any hazardous material into a non-bulk fiber drum. This commenter also suggests that we develop a uniform hazardous materials shipping paper or bill of lading. Several other commenters recommend revisions to the current training requirements in Subpart H of Part 172. Other commenters suggest that we should provide special handling provisions applicable to the transportation and recycling of lead batteries. Because these comments are beyond the scope of this rulemaking, they are not addressed in this final rule.

A. Packaging Specifications

The NPRM proposed that Federal hazmat law and the HMR would continue to apply, as they do currently, to persons who manufacture, mark, maintain, recondition, repair, or test packagings or components thereof that are represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce.

Packaging integrity is critical to safe transportation of hazardous materials; therefore, it is imperative that DOT exercise jurisdiction over packaging requirements to the exclusion of state and local governments. Further, uniformity of packaging specifications assures the safe and efficient movement of hazardous materials across state lines

and international boundaries. Thus, consistent with the preemption provisions of Federal hazmat law, the Secretary's regulatory jurisdiction in this area must preempt state and local law. The NPRM noted that a packaging marked to certify that it conforms to HMR requirements must be maintained in accordance with applicable specification requirements whether or not it is in transportation in commerce at any particular time.

Commenters generally support this aspect of the NPRM. Commenters agree that the packaging requirements "directly affect packaging integrity and are specifically delineated in the enabling statute." (American Chemistry Council)

Three commenters express concern that the requirement to maintain a certified packaging in accordance with applicable specification requirements whether or not it is in transportation will impose a significant compliance burden. The commenters "purchase many containers, such as steel drums, which arrive with DOT or UN specification markings, but are used for purposes other than the transport of hazardous materials. Since DOT or UN specification markings are permanently affixed to such containers, and cannot be easily removed or covered, this requirement would require considerable effort to establish a separate supply chain * * *" (Detroit Edison) Another commenter states, "Containers are used in facilities for a number of things from interim storage to waste receptacles. A facility should not be required to maintain the certification for a package if it is in any other use than for transportation." (Nuclear Energy Institute)

The specification markings on DOT or UN specification packagings certify that the packaging has been designed, tested, and maintained in conformance with all applicable HMR requirements. The NPRM proposed no change in the current applicability of the HMR to packagings that are represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce. We recognize that many entities use DOT or UN specification packagings for temporary or permanent storage of hazardous materials. However, because a packaging that is used for storage one day may be used for transportation the next, it is critical to transportation safety that packagings represented as meeting DOT or UN specification requirements in fact do so.

A DOT or UN specification packaging that does not conform to the marked standard must be clearly identified by

the manufacturer or distributor as not conforming to the marked standard. Under the notification provisions of § 178.2(c) of the HMR, the manufacturer and each subsequent distributor of a non-conforming packaging must inform customers of all regulatory requirements not met at the time of transfer. For example, the manufacturer of a drum for which both conforming and non-conforming covers are offered may indicate as part of the notification requirement that, when fitted with the non-conforming cover, the drum does not conform to the marked standard. Covers must be marked or there must be a sufficient description in the notification for the user to readily distinguish between the conforming and non-conforming cover. In such cases, non-applicable standard markings should be covered, removed, or obliterated. We realize that this may not be practical, particularly for packagings with embossed markings. Provided sufficient information is provided to enable the user to identify packagings that do not meet all applicable regulatory requirements, the appearance of standard markings is not prohibited.

Persons who offer hazardous materials for transportation must assure that the packaging used for such transportation conforms to all applicable regulatory requirements. In the case of specification packagings, persons who offer hazardous materials for transportation must assure that the packaging conforms to the applicable specification in all respects and that it has been properly maintained and repaired. If a packaging shows evidence of damage such that its effectiveness as a container may be substantially reduced or if the packaging has been subjected to conditions or operating practices that could reduce its effectiveness, it must be inspected and repaired, in accordance with applicable requirements, before it can be filled with a hazardous material and offered for transportation.

In this final rule, we are reiterating that the HMR apply, as they do currently, to persons who manufacture, mark, maintain, recondition, repair, or test packagings or components thereof that are represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce.

B. Pre-Transportation Functions

In the NPRM, we proposed a new term—"pre-transportation function"—for activities performed prior to the transportation of a hazardous material and to which the HMR apply. As defined in the NPRM, a pre-

transportation function is performed to prepare a hazardous material and its accompanying shipping documentation for transportation and is required to assure its safe transportation in commerce. Thus, pre-transportation functions include activities such as determining a material's hazard class, selecting a packaging, marking and labeling a package, preparing shipping papers and emergency response information, and selecting and affixing placards. Preparation of a hazardous material for transportation also includes filling and closing the packaging. As defined in the NPRM, pre-transportation functions include: (1) Determining the hazard class of a hazardous material; (2) selecting a hazardous materials packaging; (3) filling a hazardous materials packaging; (4) securing a closure on a filled hazardous materials package or container or on one containing a residue of a hazardous material; (5) marking a package to indicate that it contains a hazardous material; (6) labeling a package to indicate that it contains a hazardous material; (7) preparing a hazardous materials shipping paper; (8) providing and maintaining hazardous materials emergency response information; (9) reviewing a hazardous materials shipping paper to verify compliance with the HMR or international equivalents; (10) for persons importing a hazardous material in to the United States, providing the shipper and the forwarding agent at the place of entry into the United States with information as to the requirements of the HMR that apply to the shipment of the material while in the United States; (11) certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR; (12) blocking and bracing a hazardous materials package in a freight container or transport vehicle; (13) segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo; and (14) selecting, providing, or affixing placards for a transport vehicle to indicate that it is carrying hazardous materials.

These functions usually occur before transportation in commerce begins—that is, before a carrier takes possession of the hazardous material. However, most commenters agree that pre-transportation functions have a direct bearing on the safety of a hazardous materials shipment in commerce and, thus, should be subject to the HMR. Further, commenters agree that regulation of these functions must be uniformly applied and enforced if a

hazardous materials shipment is to move smoothly, efficiently, and safely from its point of origin to its destination. As we explained in the NPRM, Congress recognized the importance of national uniformity in these areas by creating a specific preemption provision in section 5125(b) of Federal hazmat law applicable to state, local, and Indian tribe requirements on: (1) The designation, description, and classification of hazardous material; (2) the packing, repacking, handling, labeling, marking, and placarding of hazardous material; (3) the preparation, execution, and use of shipping documents related to hazardous material 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; and (5) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

Certain functions may be considered both pre-transportation and transportation functions, particularly those that involve loading of hazardous materials into packagings or onto transport vehicles. In the NPRM, we identified loading functions as pre-transportation functions, including: (1) Filling of a packaging (both bulk and non-bulk); (2) securing closures on a filled hazardous materials package (both bulk and non-bulk) or on one containing a residue of a hazardous material; (3) blocking and bracing hazardous materials in a freight container or transport vehicle; or (4) segregating hazardous materials packages in a freight container or transport vehicle from incompatible cargo. The NPRM also identified loading of packaged or containerized material onto a transport vehicle or loading of hazardous materials into a bulk packaging as loading incidental to movement. Commenters expressed confusion about this aspect of the NPRM.

It was our intention in the NPRM to clarify that loading functions, as listed above, are regulated under the HMR when performed by any person, whether shipper or carrier. If a shipper performs a loading function prior to the carrier's arrival at the shipper facility, that function is a pre-transportation function and is subject to all applicable regulatory requirements. Because carrier possession of a hazardous material is key to our definition of "transportation" for purposes of the HMR, loading

functions that are performed by carrier personnel or by shipper personnel in the presence of the carrier are considered loading incidental to movement and are, thus, transportation functions. Irrespective of the person performing the function or the designation as a pre-transportation or transportation function, loading is regulated under the HMR.

For consistency with our treatment of non-bulk packagings, in the NPRM and this final rule we include filling and closing of a bulk packaging as a pre-transportation function in the same way that filling and closing a non-bulk packaging is a pre-transportation function. Filling and closing a hazardous materials packaging, whether bulk or non-bulk, is part of the process of preparing the hazardous material for transportation. As stated above, any person who performs a pre-transportation function must perform that function in accordance with the HMR. Thus, any person who fills and closes a bulk or non-bulk packaging must assure that the packaging is filled and closures are secured in accordance with all applicable regulatory requirements. Such person may be a shipper or a carrier. If a shipper performs the function, it is a pre-transportation function. If a carrier performs the function or if the function is performed in the presence of the carrier, then it is a transportation function.

Similarly, blocking and bracing and segregation of packages in a transport vehicle are functions frequently performed by carrier personnel. However, shipper personnel may also perform such functions, particularly when loading hazardous materials packages into freight containers. These are regulated functions under the HMR, whether performed by shipper or carrier personnel.

In this final rule, we modified the definitions of "pre-transportation function" and "loading incidental to movement" to reflect commenters' suggestions and concerns. "Pre-transportation function" is defined in this final rule as a function specified in the HMR that is performed prior to the movement of hazardous materials in commerce and is required to assure the safe transportation of a hazardous material in commerce. The list of examples of pre-transportation functions includes filling a hazardous materials packaging, including a bulk packaging; blocking and bracing a hazardous materials package in a freight container or transport vehicle; and segregating a hazardous materials package in a freight container or

transport vehicle from incompatible cargo.

“Loading incidental to movement” is defined in this final rule to mean loading of packaged or containerized hazardous material by carrier personnel or in the presence of carrier personnel onto a transport vehicle, aircraft, or vessel for the purpose of transporting it, including blocking and bracing a hazardous materials package in a freight container or transport vehicle, and segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo. For a bulk packaging, “loading incidental to movement” means filling of a bulk packaging by carrier personnel or in the presence of carrier personnel for the purpose of transporting it. A shipper who loads hazardous materials into a cargo tank or rail tank car is subject to HMR requirements applicable to such loading in the same way that a carrier performing the same function is subject to applicable HMR requirements. When a shipper performs such loading functions in the absence of the carrier, they are pre-transportation functions. When a carrier performs such loading functions or the shipper performs the functions with the carrier present, the functions meet the definition for “loading incidental to movement.” We also modified the description of pre-transportation functions in § 171.1(b) to indicate that such functions may be performed by shipper or carrier personnel. It is important to note in this context that, even where the HMR specify requirements for loading a packaging or container, OSHA requirements may also apply. As discussed elsewhere in this preamble, OSHA regulations may specify operational procedures for hazardous materials loading operations. Persons who perform loading operations generally will have to comply with both the HMR and OSHA requirements. Similarly, EPA requirements for environmental protection that relate to loading operations—such as requirements for secondary containment or vapor recovery—may also apply.

One commenter suggests that the “discussion of ‘pre-transportation functions’ in [the NPRM], which concludes that such activities are not ‘incidental’ to the movement of hazardous materials, is statutorily nonsensical and unsupported by the words of the statute.” * * * The statute contains no authorization for “pre-transportation functions.” It only contains authorization for the agency to regulate the ‘movement’ of goods; or loading, unloading or storage ‘incidental’ to movement; or (in Section

5103(b)(iii)) a few named activities connected with the manufacture and repair of packaging or containers (not at issue here). * * * If DOT insists that the named ‘pre-transportation’ functions do not fall into the statutory category of ‘movement’ (because the carrier has not taken possession of the material * * *), then they must fall into the statutory category of loading, unloading, or storage ‘incidental’ to the movement of such goods.” (National Industrial Transportation League) The commenter appears to have misread Federal hazmat law. Federal hazmat law authorizes the Secretary of Transportation to establish regulations for the safe and secure transportation of hazardous materials in commerce. The regulations apply to persons who: (1) Transport hazardous materials in commerce; (2) *cause hazardous materials to be transported in commerce*; or (3) manufacture, mark, maintain, recondition, repair, or test packagings or containers (or components thereof) that are represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce. 49 U.S.C. 5103(b)(1)(A); emphasis added. In addition, the Secretary is authorized to regulate any aspect of hazardous materials transportation that the Secretary considers appropriate. 49 U.S.C. 5103(b)(1)(B); emphasis added. Federal hazmat law thus clearly recognizes the critical safety impact of activities performed in advance of transportation by persons who cause the transportation of hazardous materials in commerce. Such activities need not be considered “loading, unloading, or storage incidental to movement” to be subject to regulations promulgated under the authority of Federal hazmat law.

One commenter recommends that the definition of the term “pre-transportation function” should be “explicit, complete, and self-contained. Although the proposed definition includes descriptions of specific functions, the enumerated functions are not exclusive. * * * A definitive list would go a significant way to provide clarity and certainty in this gray area of federal jurisdiction.” (Utility Solid Waste Activities Group) We disagree that a definitive list is necessary. As adopted in this final rule, the term “pre-transportation function” is defined to mean a function that is required to assure the safe transportation of a hazardous material in commerce. The list of examples provided in the definition includes functions currently regulated under the HMR. An all-inclusive listing of pre-transportation

functions would limit our flexibility should we determine that additional pre-transportation functions should be regulated or discover that we inadvertently omitted functions or activities from the definition.

A number of commenters address the specific functions we proposed to include in the definition for “pre-transportation function.” Several commenters state that blocking and bracing of packages in a transport vehicle, segregation of materials in a transport vehicle, and providing and affixing placards to a transport vehicle should not be considered pre-transportation functions because “the carrier, not the shipper, typically performs these functions.” (FedEx Ground Package Systems, Inc.) We do not agree that carrier personnel usually perform these functions. In fact, both shippers and carriers may perform these functions. Shippers frequently use their own personnel to load trailers or freight containers. Further, it is usually the shipper who provides placards to the carrier when placarding is required by the HMR. However, the commenters are correct that carriers may perform some or all of these functions, as well. Commenters are also correct that the definition of “pre-transportation function” should not be dependent on the person performing the function. The definition is intended to delineate functions and activities that are regulated under the HMR because, while they generally occur before transportation in commerce begins, they directly affect transportation safety.

As one commenter points out, “In reality, after taking possession of a hazardous material, carriers also perform activities that RSPA classifies in the Proposed Rule as ‘pre-transportation functions.’ In any final rule, RSPA should clarify that ‘pre-transportation functions’ are not solely performed prior to a carrier’s possession of a hazardous material, and that carriers may perform ‘pre-transportation’ functions *after* taking possession of a hazardous material.” (United Parcel Service, Inc.) We agree. As we stated in the preamble to the NPRM, any person who performs a pre-transportation function must perform that function in accordance with HMR requirements. Such persons may include shippers, carriers, freight forwarders, non-vessel operating common carriers, freight brokers, and other entities. In this final rule, we modified the definition of “pre-transportation function” to clarify that the HMR requirements apply to any person who performs or is responsible

for performing a pre-transportation function.

Several commenters address the statement in the preamble to the NPRM, reiterated above, that any person who performs a pre-transportation function must perform that function in accordance with HMR requirements. In this context, the NPRM noted that the HMR apply to persons who offer hazardous materials for transportation in commerce or cause hazardous materials to be transported in commerce. As examples of persons who cause hazardous materials to be transported in commerce, the NPRM listed freight forwarders, non-vessel operating common carriers, freight brokers, and other entities that perform pre-transportation functions. One commenter states, "Since in more than 70% of 'third party shipments' the third party has no physical involvement with the shipments, making them liable on these shipments for compliance with hazmat regulations, makes them a guarantor of compliance, when they have no ability to effectuate compliance." (Gallagher and Howarth, P.C.) This commenter is concerned that this detail in the NPRM creates an uninsurable liability for third parties who "simply arranged the transportation of the shipment."

Another commenter "believes that the proposed regulation of 'pre-transportation functions' as drafted would be unfair, and possibly unenforceable as well. * * * [B]rokers, freight forwarders and [non-vessel operating common carriers] seldom deal with the freight physically at the dock, and they must rely heavily on information received from shippers as to the contents. Intermediaries have the responsibility to select the carrier, and they may issue a house bill of lading or freight receipt to the shipper, but they do not ordinarily take responsibility for preparing the underlying carrier's shipment documentation, or for making the physical arrangements to classify, placard, brace and pack the cargo. As long as either the shipper or the underlying carrier is performing those functions, it would be unfair and unworkable for DOT to hold the intermediary liable for any errors made by parties over which they have no operational control." (Transportation Intermediaries Association)

We agree. We did not mean to suggest that third-party intermediaries would be held responsible for errors made by the shippers and carriers with whom they work unless the third-party knew or should have known about the error. A third-party intermediary who prepares a shipping paper for a hazardous

materials shipment and signs the shipper certification is, in effect, assuming responsibility for compliance with the regulations for all aspects of that shipment about which he knew or should have known. For example, if a freight forwarder or consolidator prepares a new shipping paper for a consolidated load that includes hazardous materials, the shipping paper must conform to all applicable HMR requirements. We realize that the shipping paper will be based on information provided by the original shipper. A third-party intermediary would not be held responsible for errors made by the shipper in its initial shipping documentation, such as incorrect classification of a material. However, using the information available, a third-party intermediary is responsible for completing a shipping paper in accordance with HMR requirements. As another example, a third-party intermediary may handle a package that contains a hazardous material. If the shipping documentation prepared by the original shipper indicates that the material is a flammable liquid, but the package label indicates a CORROSIVE hazard, the third-party intermediary must resolve the discrepancy before the package may be transported. In such a situation, the third-party intermediary knew or should have known that the shipment he was handling did not conform to applicable regulatory requirements. Further, as is currently the case, a third-party intermediary who performs a pre-transportation function must perform that function in conformance with the HMR. For example, if a third-party intermediary consolidates a number of packages into a freight container, he must assure that the packages are loaded into the freight container as required by applicable regulations, including those related to blocking and bracing of cargo or segregation of incompatible materials.

In the NPRM, we proposed to define "offer a hazardous material" to mean the performance of a pre-transportation function under the HMR. In this way, we intended to clarify that, consistent with Federal hazmat law, the HMR apply to functions performed to prepare hazardous materials for transportation in commerce as well as to the actual transportation of hazardous materials in commerce. In addition, we proposed to define "pre-transportation function" to mean tendering a hazardous material to a carrier for transportation in commerce, causing a hazardous material to be transported in commerce, or performing a function in the HMR that is required to assure the safe transportation of a

hazardous material in commerce. Further, in § 171.2, we proposed that no person may offer or accept a hazardous material for transportation unless the hazardous material is properly classed, described, packaged, marked labeled, and in condition for shipment as required under the HMR.

Several commenters note that under our proposed definitions, a shipper would *offer* a hazardous material when performing pre-transportation functions that § 171.2 requires the shipper to perform *prior to offering* a hazardous material for transportation. "RSPA could not have intended such an anomalous and circular result, and accordingly should either revise or withdraw its proposed definition of 'Offer a hazardous material.'" (United Parcel Service, Inc.) Commenters are correct. We did not intend such an anomalous and circular result. In this final rule, we revised the definition of "pre-transportation function" to mean a function specified in the HMR that is required to ensure the safe transportation of a hazardous material in commerce. We agree with commenters that the proposed definition for "offer a hazardous material" is confusing and difficult to apply. Therefore, in this final rule we do not include a definition for "offer a hazardous material."

Several commenters express confusion as to precisely when a person performing pre-transportation functions is responsible for demonstrating compliance with the HMR's pre-transportation requirements. "Most [facilities at which hazardous materials are tendered for shipment] have multilevel check systems designed to ensure that the freight conforms to applicable HMR requirements. The [facility's hazmat employees] can make final changes to documentation, labels, etc., up until the time that the product is loaded and shipping documents are signed." (International Warehouse Logistics Association) We agree with commenters that this point needs clarification. However, the point at which non-compliance with a pre-transportation function becomes enforceable will depend on the facts applicable to a specific instance. As a general rule, we would expect an offeror to be able to demonstrate compliance with all applicable pre-transportation requirements at the time the hazardous material is staged for loading and the consignor or his agent signs the shipping paper. The offeror's signature (or that of his agent as permitted by § 172.205(d)(1)) on the shipping paper is its certification that the hazardous

material is prepared for transportation in accordance with HMR requirements.

Even in the absence of a signed shipping paper, a shipper may be responsible for assuring compliance with specific pre-transportation requirements if other factors indicate that a particular pre-transportation activity has been completed. For example, if a shipper has loaded a trailer with improperly packaged hazardous materials and requested that a carrier pick it up for transport, it is fairly clear that the shipper does not intend to make further changes to the packages, even if a shipping paper has not yet been executed.

We will continue to exercise our statutory authority to inspect for compliance with the HMR requirements applicable to pre-transportation functions. We will also continue to exercise our authority to take appropriate enforcement action when we discover that a pre-transportation function has been performed in a manner that does not comply with the HMR, even if transportation of the hazardous material in commerce has not yet begun (*i.e.*, the carrier has not yet taken possession of the material) or has not been performed at all (*i.e.*, undeclared shipments offered for transportation). This approach is consistent with our authority under § 5103 of Federal hazmat law to regulate activities that affect the safe and secure transportation of hazardous materials in commerce. Also, as stated above, this approach is consistent with Congress' intent that the HMR requirements applicable to the activities we propose to define as "pre-transportation functions" be applied and enforced in a manner that promotes uniformity in those areas.

Several commenters note that the NPRM included two inconsistent descriptions of pre-transportation functions. In proposed § 171.2, we listed 14 activities; in proposed § 171.8, we inadvertently omitted one listed activity. In this final rule, we corrected the regulatory text to make the two sections consistent.

The NPRM proposed to include as a "pre-transportation function" the providing of timely and complete information as to the HMR requirements that will apply to the transportation of the material within the United States to the shipper and the forwarding agent at the place of entry into the United States. Two commenters suggest a revision to remove the phrase "and the forwarding agent at the place of entry into the United States" for consistency with applicable Customs requirements. "The shipper, to be in compliance with

applicable international and United States regulations, is required to provide the requisite hazmat information to the carrier and/or forwarding agents prior to the introduction of the material into international transportation and commerce. Classification, product description (selection of shipping name), package selection, testing, marking, labeling and creation of applicable shipping papers should all occur before the material reaches the 'place of entry into the United States.' Further, communications with the involved freight forwarder may or may not involve the importer. The party responsible for obtaining the transportation generally has this relationship. Removal of this phrase from the regulation will continue to meet the safety and communications requirements intended while providing the flexibility of clearance now permitted under Customs rules." (E.I. DuPont de Nemours and Company) We agree and have made the suggested revision in this final rule.

In this final rule, we are adopting the definition for "pre-transportation function" as proposed in the NPRM, with the revisions suggested by commenters and discussed above.

C. Transportation That Is "in Commerce"

In the NPRM, we proposed several definitions to clarify the applicability of the HMR to transportation functions and the persons who perform them. Federal hazmat law requires the Secretary of Transportation to establish regulations for the safe and secure transportation of hazardous materials in intrastate, interstate, and foreign commerce. As noted above, the law defines "transportation" and "commerce" separately. Further, Federal hazmat law authorizes the Secretary of Transportation to apply these regulations to persons who transport hazardous materials in commerce or cause hazardous materials to be transported in commerce.

The NPRM proposed to include in the HMR a section specifically stating that noncommercial transportation of hazardous materials is not subject to the HMR. Consistent with numerous letters of interpretation issued over the past several decades (see NPRM discussion at 66 FR 32431–32432), the NPRM proposal included a list of activities that are not part of transportation of a hazardous material in commerce and, therefore, not subject to regulation under the HMR. The list included: (1) Transportation by private individuals in private motor vehicles for personal use; (2) transportation by government

employees for government purposes; and (3) rail and motor vehicle movements of hazardous material occurring solely within a contiguous facility boundary where public access is restricted.

Commenters generally agree that transportation of hazardous materials by private individuals in private motor vehicles for personal use is not transportation in commerce and is thus outside the scope of authority delineated in Federal hazmat law. Similarly, most commenters agree that government entities transporting hazardous materials for non-commercial purposes are not "persons" subject to Federal hazmat law. (See 49 U.S.C. 5102(9).)

One commenter disagrees that transportation of hazardous materials by government entities for government purposes should be excluded from regulation under the HMR. "[We do] not see why hazardous materials being moved * * * in motor vehicles, aircraft or vessels operated by federal, state or local government employees * * * pose any less of a threat to the people of the United States than those of private operators." (E.I. DuPont de Nemours and Company) Our authority to regulate the transportation of hazardous materials is restricted by Federal hazmat law. As stated above, Federal hazmat law specifically excludes government entities from regulation when moving hazardous materials for a non-commercial purpose. Thus, application of the HMR to such movements is outside the scope of the Secretary's regulatory authority under the law.

One commenter expresses confusion about movements of hazardous materials that occur entirely within a contiguous facility boundary where public access is restricted. The commenter formulates the following scenario: "Once the shipper personnel have loaded the hazardous material into the cargo tank, it is then returned to the central staging area [within the contiguous facility boundary]. If the carrier moves the loaded cargo tank from the loading point back to the central staging area then the HMRs would apply; however, if [company] personnel move the loaded cargo tank from the loading area back to the central staging area then the HMR would not apply." (Dow) The commenter is not correct. As described in the NPRM (66 FR 32431) and adopted in this final rule, movement of hazardous materials that occurs entirely within a contiguous facility boundary where public access is restricted is not commercial transportation and therefore is not

subject to HMR requirements, even if the movement is conducted by a common or contract carrier. Thus, for example, movement of hazardous materials between Warehouse A and Warehouse B that occurs solely within the contiguous boundaries of a facility is not movement in commerce; shipping paper, UN specification packaging, labeling, marking, and other HMR requirements do not apply to these types of movements.

As we discussed in the preamble to the NPRM (66 FR 32432), we have indicated in letters of interpretation that use of a red traffic signal or road closure to deny public access to a public highway utilized for movements of hazardous materials between areas of the same facility makes the portion of the highway to which access is restricted private. Movements of hazardous materials in such circumstances are not subject to the HMR. The same conditions apply to rail transportation of hazardous materials that utilizes private railroad tracks that cross a public highway. In a letter of interpretation, we have said that the HMR apply to transportation on private tracks that are not part of the general system of rail transportation if the private tracks cross a public highway and access to the tracks is not controlled or restricted (May 4, 1998 RSPA letter to Amoco Chemicals). However, if warning lights or a gate restricts access to the tracks during the hazardous materials movement, then the HMR do not apply.

Another commenter requests clarification of the status under the HMR of emergency vehicles, such as aircraft rescue and firefighting vehicles, that are owned by a private company and respond to emergencies on company property. The commenter notes that, although these emergency vehicles generally operate on company property, they also have official county identification numbers as emergency vehicles and may be dispatched to respond to incidents in the community in the same way that a public agency would respond.

Emergency vehicles owned by a company are not regulated under the HMR when they operate solely within the contiguous boundaries of a facility to respond to emergencies at the facility. Further, such emergency vehicles are not subject to HMR requirements when they leave company property to respond to emergencies because they are acting under the authority of the local government, which treats them as a government-operated vehicle for community emergency response. Similarly, because such vehicles operate

under local government authority, they are not subject to HMR requirements when they leave company property for maintenance, offsite training, or other purposes.

The NPRM included transportation activities of state-chartered and -funded universities as noncommercial transportation, unless the university transports hazardous materials in furtherance of a commercial enterprise. One commenter suggests that “[t]he definition of ‘in commerce’ should be expanded to include state entities which are engaged in private enterprises of any percentage. If a state entity chooses to allow private enterprises to use its facilities and to co-mingle their hazardous [materials] with that of the state entity, the state entity has taken itself out of the ‘in commerce’ exception.” (The Frickey Law Firm) We disagree. A state entity need not treat all transportation activities as commercial transportation merely because some of its transportation of hazardous materials is in furtherance of a commercial enterprise.

This commenter also asks for clarification concerning whether the use of contractor personnel by a state-chartered and -funded university to perform functions regulated under the HMR triggers coverage by the HMR. “[T]he use of outside contractors by a state entity * * * should be clearly defined as falling within the HMR.” (The Frickey Law Firm) We agree. The NPRM (66 FR 32431) and this final rule specifically state that the HMR apply to contractor personnel who perform regulated activities related to: (1) Packaging manufacturing, maintenance, and requalification; (2) pre-transportation functions; and (3) transportation functions (see § 171.1(a), (b), and (c)).

One commenter requests clarification of the statements in the NPRM on the applicability of the HMR to movements of hazardous materials within an airport facility. “Proposed § 171.1(d)(4) appears to imply that movement [of hazardous materials] by or aboard ramp vehicles [at an airport]—either containerized cargo on dollies or uncontainerized packages on carts, or ramp vehicles making ramp transfers of packages—could require the issuance of shipping papers to those on-airport drivers. At the time that hazardous materials are staged for flight, they are fully prepared for pickup prior to air transportation and delivery subsequent to air transportation. All hazard communications and notifications are in place for ground handlers and flight crew. Any requirement for additional shipping papers for the on-airport

drivers of these incidental ramp vehicles would impose an unjustified cost and obstructive delay of airport operations.” (Air Transport Association) This commenter suggests that the NPRM proposed to “abandon” our past policy of excluding intra-facility movements of hazardous materials from regulation under the HMR because the language of § 171.1(d)(4) included the phrase “other than at a transportation facility” when describing movements of hazardous materials within a contiguous facility boundary.

The NPRM (66 FR 32431) cited letters of interpretation that clarified that the HMR do not apply to intra-facility movements of hazardous materials that take place entirely on private property or where public access is denied or restricted. Such movements are not “in commerce” and, therefore, are not subject to regulation under the HMR. At an airport, such movements include transfers of hazardous materials used for aircraft maintenance and refueling operations from one location to another within the airport’s boundaries.

As the NPRM noted, baggage or packages offered to airlines for transportation are subject to HMR requirements during that portion of transportation that takes place in the airport and thereafter. Thus, for example, the prohibitions in the HMR applicable to hazardous materials that may not be carried in baggage on board an aircraft apply to baggage that is brought to an airport and transported through the airport to an airplane. Similarly, requirements for hazardous materials offered as cargo to an airline apply when the airline accepts the package for transportation and during its movement at the airport prior to loading onto an airplane. This statement should not be interpreted to mean that an airline must complete a separate shipping paper each time cargo is transferred through the airport to or from an airplane. Rather, our intention is to make clear that requirements for appropriate packaging, marking, labeling, emergency response information, shipping documentation, and the like continue to apply while the cargo is moving on airport property. The NPRM did not propose an abandonment of our long-standing interpretation of the meaning of “transportation that is in commerce.” Rather, the NPRM, and this final rule, reiterate this long-standing interpretation and make it explicit in the HMR. We agree that the phrase “other than at a transportation facility” as used in the NPRM is misleading and have removed it in this final rule.

Note that for rail transportation, certain intra-facility movements may be

subject to HMR requirements. For example, movements within railyards to assemble rail cars containing hazardous materials into trains are subject to applicable HMR requirements. In addition, facilities at which rail cars containing hazardous materials are received, stored, or handled during transportation must maintain emergency response information applicable to the hazardous materials in accordance with § 172.602 of the HMR.

The NPRM proposed to except from coverage under the HMR “any matter subject to the postal laws and regulations.” One commenter opposes this exception. “RSPA does not provide a reason for this exemption or indicate what precautions are in place or are being implemented to justify this position. The fact that all items transported by the U.S. Postal Service (USPS) will enter the transportation system at some point and will be transported by commercial carriers should be of utmost interest and concern to RSPA.” (National Transportation Safety Board) The exception for matter covered by postal laws and regulations is based on Federal hazmat law, which explicitly excludes the U.S. Postal Service from the definition of “persons” to whom Federal hazmat law and the regulations issued thereunder apply. 49 U.S.C. 5102. The statute also explicitly excludes from its application “any matter that is subject to the postal laws and regulations of the United States under this chapter or title 18 or 39.” 49 U.S.C. 5126.

In the NPRM, we proposed to define “commerce” to mean trade or transportation in the jurisdiction of the United States between a place in a state and a place outside of the state; or that affects trade or transportation between a place in a state and a place outside of the state. Several commenters disagree with this proposed definition, noting that it appears to exclude intrastate commerce. “Congressional instructions to the Secretary * * * indicate that the Secretary * * * shall issue regulations for the safe transport of hazardous materials in intrastate, interstate, and foreign commerce.” [49 U.S.C. 5103(b)(1)] The definition of the term ‘commerce’ * * * should reflect this instruction and be enlarged to include hazardous materials movements within a state as well as those in interstate commerce. Such a change would reflect current practice and is * * * consistent with current understanding * * * (E.I. Dupont de Nemours and Company) We agree. The definition proposed in the NPRM is consistent with the definition of “commerce” in §§ 5102 and 5103 of

Federal hazmat law. However, the language in § 5103(b) is more explicit concerning the Secretary’s authority to regulate intrastate commerce. In this final rule, we revised the definition of “commerce” as suggested by commenters to clearly include intrastate transportation as specified in § 5103 of Federal hazmat law.

D. Transportation Functions Subject to the HMR

The NPRM proposed that, for purposes of applicability of the HMR, transportation in commerce begins when a carrier takes physical possession of a hazardous material for the purpose of transporting it and continues until the package containing the hazardous material is delivered to the destination indicated on the shipping documentation under which the hazardous material is moving. This proposal was based on our conclusion that the key word in the definition of “transportation” in Federal hazmat law is “movement.” We proposed to define “movement” to mean “the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel.” Because a carrier “moves” a hazardous material, transportation in commerce necessarily involves activities performed by a carrier in connection with the movement of a hazardous material. Thus, under the NPRM proposal, all loading, unloading, and storage functions performed by a carrier in the course of transporting a hazardous material in commerce would be subject to the HMR.

A number of commenters support this demarcation of the beginning and end points of transportation in commerce. “We believe that the definition of ‘in transportation’ must be a simple one which is applied uniformly to all types of containers under all types of circumstances. Transportation in commerce should begin when a carrier accepts and exercises control over a hazardous material for purposes of transporting it and ends when the carrier relinquishes control of the shipment.” (Monsanto Company; see also Arkansas Department of Environmental Quality, Contra Costa Health Services, Environmental Technology Council, International Brotherhood of Teamsters, International Warehouse Logistics Association, County of Los Angeles Fire Department, and National Propane Gas Association) However, many commenters disagree with the NPRM approach. Most of these commenters state that a definition of “transportation in commerce” should include all loading and unloading

operations involving hazardous materials and suggest broadening the proposed definition accordingly.

In making the case for a broader definition for “transportation in commerce,” several commenters suggest that we have misread Federal hazmat law. “[Federal hazmat law] defines transportation as the ‘movement of property and loading, unloading, or storage incidental to the movement.’ 49 U.S.C. 5102(12). The grammatical construction of the definition makes clear that the term ‘storage’ is modified by the phrase ‘incidental to the movement,’ while the terms ‘loading’ and ‘unloading’ stand by themselves. As such, RSPA has jurisdiction over all loading and unloading of hazardous materials that are transported, while RSPA’s jurisdiction over storage activities is limited to those storage activities that are incidental to the movement/transportation of the materials.” (American Trucking Associations) We disagree. If Congress had intended DOT’s statutory authority to include all loading and unloading of hazardous materials that are transported, Federal hazmat law would have defined “transportation” to mean “the movement, loading, and unloading of property, and storage incidental to the movement.” There is no legislative history on this point. However, it is clear that Congress intended the phrase “incidental to the movement” to modify the terms “loading,” “unloading,” and “storage.” This language and our interpretation of it are longstanding, dating back to the Hazardous Materials Transportation Act of 1975. Congress has had a number of opportunities to change the language and our interpretation in subsequent authorization legislation, but has not elected to do so. The fact that Congress continued to incorporate the language at issue in the Hazardous Materials Uniform Safety Act of 1990 and the recodification of Federal hazmat law in 1994 indicates that our position regarding this language is correct.

Many commenters suggest a broader definition for “transportation in commerce.” These commenters say that “[t]ransportation in commerce” should begin when a hazardous material first begins to flow into a bulk package or when a non-bulk package is loaded onto a transport conveyance (truck trailer, railcar, ocean or intermodal container) and continue until that material is removed from the bulk package or the non-bulk packages are removed from the transportation conveyance. * * * [B]ulk packages should remain in ‘transportation in commerce’ and subject to the HMR so long as any

residue of hazardous material remains.” (American Chemistry Council) Other commenters suggest that DOT or UN specification bulk packagings should be regarded as “instruments of commerce” and should be “under DOT’s jurisdiction at all times and in all places.” (Dangerous Goods Advisory Council)

We disagree. As we stated in the NPRM, in clarifying the applicability of the HMR, we must consider how such clarification will affect other Federal and non-Federal programs that govern hazardous materials operations at fixed facilities. We must, therefore, look to Congressional and agency intent as expressed in the body of statutes and regulations exercising Federal jurisdiction over hazardous materials where transportation and non-transportation activities intersect. The Occupational Safety and Health Act (OSH Act), which provides the statutory authority for regulatory programs administered by OSHA, the authorizing statutes for the regulatory programs administered by EPA, and the Organized Crime Control Act of 1970, which provides the statutory basis for ATF programs applicable to the safety and security of explosives, express different statutory purposes. We must interpret and implement Federal hazmat law in a way that fulfils its statutory purpose and is consistent with the statutory purposes of the OSH Act, the Organized Crime Control Act, and EPA’s statutes.

A broad definition of “transportation in commerce” that encompasses all activities that occur beginning when a bulk packaging is filled and continuing until no residue of hazardous material remains or that considers DOT or UN specification bulk packagings to be “instruments of commerce” would result in DOT regulation of long-term storage operations at both shipper and consignee facilities. This would have the effect of limiting and, perhaps, precluding regulation of hazardous materials stored at fixed facilities by other Federal and non-Federal government agencies. Federal and non-Federal programs for worker and environmental protection and the safety and security of explosives, established under the OSH Act, EPA’s authorizing statutes, and the Organized Crime Control Act, could be adversely affected. Such an outcome clearly would be contrary to the intent of Congress as expressed in these laws and Federal hazmat law.

Commenters also suggest that broadening the proposed definition of “transportation in commerce” in the NPRM supports one of the primary

purposes of Federal hazmat law—to promote nationally uniform regulations applicable to hazardous materials transportation. “It has long been recognized that safety is enhanced dramatically when there are national, uniform standards governing the conduct at issue. Management efforts to track, implement, and report on different local, state, and Federal regulations only bring confusion and therefore, decrease the level of safety to our society and the environment.” (National Paint and Paint Coatings Association, Inc.) Many commenters suggest that the proposed definition in the NPRM, which keys transportation in commerce to carrier control and possession of a hazardous material, will make it “unmanageable to comply with the separate requirements of various Federal, state, and local authorities. This will invite state and local government to create different and perhaps conflicting rules regarding the loading and unloading of hazardous materials destined for or emerging from transportation and performed by persons other than the carrier’s driver. Furthermore, this proposal would provide for local and state jurisdictions to set forth hazardous materials regulations without guidance or oversight by DOT.” (American Chemistry Council) Another commenter suggests that “if [a company] has multiple facilities within the United States then arguably each facility may be subject to differing state and local laws and regulations, thus precluding [the company] from implementing a consistent, best practices safety program. Uniformity is essential in the handling and transport of hazardous materials.” (Dow)

Commenters misunderstand the reason for nationally uniform regulations applicable to the transportation of hazardous materials. As commenters note, nationally uniform regulations facilitate transportation by eliminating the necessity to comply with conflicting sets of regulations as hazardous materials move across jurisdictional boundaries. Further, as commenters also agree, nationally uniform regulations enhance transportation safety by reducing confusion and simplifying the task of compliance. “Uniformity, clarity and consistency are essential when addressing the movement, loading, unloading, and storage of hazardous materials in intrastate and interstate commerce.” (Dow) We agree. However, there is no transportation safety rationale for nationally uniform regulations applicable to fixed facility

operations other than activities defined in this final rule as pre-transportation or transportation functions. The employees at a fixed facility do not cross jurisdictional lines and so are not faced with the possibility of complying with different sets of possibly conflicting regulatory requirements. Further, Congress recognized that non-transportation operations involving hazardous materials at fixed facilities need not be governed by one set of nationally uniform regulations in both the OSH Act and the various statutes that authorize EPA’s programs by explicitly permitting non-Federal entities to impose requirements for worker or environmental protection at fixed facilities that are *more stringent* than Federal requirements. As we stated in the NPRM, Congress expressly recognized that state and local governments have a legitimate role in the regulation of hazardous materials at fixed facilities, and this role should be accommodated to the extent possible within the context of a nationally uniform hazardous materials transportation safety regulatory program. Our definitions for pre-transportation and transportation functions, as proposed in the NPRM and adopted with modifications in this final rule, provide a set of nationally uniform regulations governing functions that affect the safe transportation of hazardous materials in commerce and governing the actual transportation in commerce of hazardous materials. At the same time, the definitions adopted in this final rule permit other Federal agencies, states, and local governments to exercise their legitimate regulatory roles at fixed facilities.

A number of commenters assert that, in the NPRM, RSPA proposed to “withdraw” from the regulation of loading, unloading, and storage incidental to movement in a way that is inconsistent with our Congressional mandate. “* * * Congress has directed DOT to take a broad approach to the regulation of hazardous materials transportation. RSPA’s proposal to adopt a narrow definition of ‘transportation in commerce’ and withdraw from its regulation of loading, unloading, and, to a significant extent, incidental storage is inconsistent with its Congressional mandate.” (Association of American Railroads) A careful reading of the NPRM indicates that this is not, in fact, the case.

As we stated in the NPRM, the regulatory clarifications we proposed are based on long-standing administrative decisions and regulatory interpretations, which were cited in the NPRM (66 FR 32432–32436) and

included in the docket. Under the NPRM and this final rule, the HMR apply to the loading of packaged or containerized hazardous materials into transport vehicles or freight containers and the filling of bulk packagings, such as cargo tanks and rail tank cars, in the same manner that the HMR currently apply to such operations. Similarly, under the NPRM and this final rule, the HMR apply to incidental storage of hazardous materials in the same manner as currently. The only changes proposed in the NPRM to the current applicability of the HMR involve certain rail storage and unloading operations. Rail issues are discussed in more detail below.

Loading incidental to movement. The NPRM proposed that, for purposes of applicability of the HMR, loading incidental to movement is loading *associated* with such movement. Thus, the NPRM proposed to define “loading incidental to movement” to mean loading of a hazardous material onto a transport vehicle, aircraft, or vessel or into a bulk packaging for purposes of transporting it when performed by a person employed by or under contract to a for-hire carrier. For private carriers, the NPRM proposed to define “loading incidental to movement” to mean loading of a hazardous material onto a transport vehicle, aircraft, or vessel or into a bulk packaging for purposes of transporting it when performed by the driver of the motor vehicle into which the hazardous material is being loaded immediately prior to movement in commerce of the hazardous material.

Many commenters express concern about the proposed definition for “loading incidental to movement.” Much of this concern relates to the way that the NPRM attempted to divide loading activities into pre-transportation and transportation activities. Thus, one commenter suggests that “[n]o other federal agency has similar rules governing the mechanics of loading * * * hazardous materials * * * For example, DOT regulates the blocking and bracing of packages in vehicles. If DOT walks away from the function of loading * * * by non-carrier personnel, no other federal agency has rules to fill the void on a safety concern so fundamental as blocking and bracing freight.” (Institute of Makers of Explosives) As discussed under “Pre-Transportation Functions” above, blocking and bracing and segregation of hazardous materials in a transport vehicle or freight container are and will continue to be regulated functions under the HMR, irrespective of the entity that performs the function. This final rule modifies the proposed definitions for “pre-transportation

functions” and “loading incidental to movement” to clarify this point.

Commenters are also concerned that, under the NPRM proposal for defining “loading incidental to movement,” it appeared that the HMR would not apply to the loading of bulk packagings for transportation in commerce. Commenters appear to have misunderstood this aspect of the NPRM. Loading or, more accurately, filling of a bulk packaging, such as a cargo tank or rail tank car, for purposes of transporting it is now and will continue to be a regulated function under the HMR whether the function is performed by shipper or carrier personnel. To eliminate confusion on this point, this final rule clarifies that filling of a bulk packaging and securing its closures is a pre-transportation function subject to HMR requirements. The final rule also clarifies that for a bulk packaging, “loading incidental to movement” means filling of and securing the closures on a bulk packaging by carrier personnel or in the presence of carrier personnel for the purpose of transporting it. Thus, filling, or loading, of a bulk packaging for the purpose of transporting it is regulated under the HMR as a pre-transportation function if a shipper performs such filling or as a transportation function if a carrier performs such filling. Irrespective of the entity performing the function, filling, or loading, of a bulk packaging is regulated under the HMR.

It is important to note, however, that, even where the HMR specify requirements for loading a packaging or container, OSHA requirements may also apply. For example, the HMR specify filling limits for most hazmat packagings, including bulk packagings. Further, the HMR specify valving, piping, hose, and similar requirements as part of the specification packaging requirements for authorized transportation of hazardous materials. OSHA regulations cover operational procedures for loading operations with which a facility must comply and include requirements for facility equipment used for such loading operations. Persons who perform loading operations generally will have to comply with both the HMR and OSHA requirements. Similarly, EPA requirements for environmental protection that relate to loading operations—such as requirements for secondary containment or vapor recovery—may also apply.

Unloading incidental to movement. The NPRM proposed that, for purposes of applicability of the HMR, unloading incidental to movement is unloading *associated* with such movement. Thus,

the NPRM proposed to define “unloading incidental to movement” to mean unloading of a hazardous material from a transport vehicle, aircraft, or vessel or from a bulk packaging when performed by a person employed by or under contract to a for-hire carrier. For private carriers, the NPRM proposed to define “unloading incidental to movement” to mean unloading performed by the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement in commerce is completed. Under the proposed definition, hazardous materials unloading operations performed by consignees would not be subject to HMR requirements because they occur after movement of the hazardous materials in commerce is completed.

The preamble to the NPRM noted that, for the most part, our proposed definition of unloading incidental to movement is consistent with current HMR requirements, letters of interpretation, and administrative decisions we have issued to clarify the applicability of the HMR to unloading operations (66 FR 32433). As the preamble discussed, the proposals in the NPRM applicable to rail tank car unloading operations represent a change from current practice and interpretation. Currently, the tank car unloading requirements in Part 174 of the HMR apply to all unloading operations. However, we suggested in the preamble to the NPRM that rail tank car unloading operations performed by consignee personnel generally should be considered part of a manufacturing process rather than part of transportation.

Most commenters disagree with our proposed definition. “This is a significant change from current policy. No other federal agency has similar rules covering this issue and cannot fill this void.” (National Association of Chemical Distributors) Other commenters assert that the NPRM represents an effort by RSPA to relinquish its regulatory authority. “The Department of Transportation’s proposal to relinquish its regulatory authority over ‘post-transportation’ functions such as storage during movement and unloading yet retaining its regulatory authority over ‘pre-transportation’ functions and ‘transportation in commerce’ functions will jeopardize transportation safety as well as adversely impact the cost of hazardous materials transportation.” (Air Products and Chemicals, Inc.) Other commenters express concern about the “transfer” of regulatory authority from DOT to OSHA or EPA. “This proposed rule (HM-223)

transfers some of the oversight responsibilities concerning the * * * unloading * * * of hazardous materials from the U.S. Department of Transportation * * * to other federal agencies, such as the Environmental Protection Agency * * * and the Occupational Safety and Health Administration * * *. [We] are concerned that this transfer of authority and jurisdiction * * * could result in regulatory gaps and confusion about which agency is responsible for enforcing these regulations. Also in question is the ability of other federal agencies to assume additional oversight responsibilities and whether these agencies would have the personnel, resources, or expertise to effectively monitor compliance with regulations * * * (American Road and Transportation Builders Association) Similarly, "[We are] specifically concerned about the lack of expertise that personnel from [other Federal agencies] have in rail tank car design, cargo tank design, and the operational parameters associated with bulk container * * * unloading. [We are] not convinced that, if RSPA relinquishes its regulatory authority over hazardous materials * * * unloading operations, other federal and state agencies will be able to effectively exercise the necessary safety oversight of these very specific areas of transportation." (National Transportation Safety Board)

The NPRM proposals concerning the definition of "unloading incidental to movement" do not represent an effort on our part to relinquish or abdicate our authority or transfer our authority to other Federal agencies. As we stated in the NPRM, generally our proposals concerning unloading incidental to movement are consistent with current HMR requirements, letters of interpretation and administrative decisions we have issued to clarify the applicability of the HMR to unloading operations from transport vehicles and bulk packagings other than rail tank cars. Further, except for rail tank car unloading, we have never promulgated regulations applicable to "post transportation functions" at consignee facilities. The HMR are promulgated under the mandate in 49 U.S.C. 5103(b) that the Secretary "prescribe regulations for the safe *transportation* of hazardous material in intrastate, interstate, and foreign commerce." (Emphasis added.) Section 5103(b)(1)(B) provides that the HMR "shall govern safety aspects of the *transportation* of hazardous material the Secretary considers appropriate." (Emphasis added.)

Congress recognized that post-transportation activities should be

regulated by Federal agencies, such as OSHA, EPA, and ATF, that generally have authority to regulate non-transportation activities at fixed facilities. For example, Congress directed that OSHA, and not DOT, issue regulations to require labels and placards affixed to hazardous materials packages in accordance with the HMR to remain on the packages after delivery until they are emptied. (See section 29, Public law 101-615, 1990.)

Commenters are correct that the NPRM proposals applicable to unloading of rail tank cars are a change from current practice and interpretation. As stated in the NPRM, the proposals applicable to rail tank car unloading operations stem from changes in the way rail tank cars are used in manufacturing processes and are consistent with RSPA's current regulation of cargo tank unloading operations.

Despite commenters' opposition, we continue to believe that the unloading of a rail tank car directly into a manufacturing process is more properly considered part of a manufacturing operation, not a transportation operation. The rail tank car has been delivered to the consignee by the rail carrier; in many cases, the rail tank car sits for several days, weeks, or even months prior to commencement of the unloading operation. Commenters assert that, because the vessel being unloaded is a DOT or UN specification packaging, all operations related to that vessel should be subject to regulation under the HMR. This position is difficult to support. DOT or UN specification packagings are used for many purposes besides transportation. For example, firefighters' equipment includes DOT specification cylinders as part of self-contained breathing apparatus. The DOT cylinder itself remains subject to DOT requirements for repair and maintenance. However, no one would assert that DOT should develop regulations for firefighters' use of self-contained breathing apparatus merely because that apparatus incorporates a DOT specification packaging. Similarly, it is difficult to argue that manufacturing operations should be subject to regulation under the HMR merely because such operations may incorporate a DOT or UN specification packaging as part of the process. OSHA is the Federal agency charged by the Congress with workplace safety oversight. OSHA has detailed requirements for process safety management that apply to all aspects of the manufacturing process, including rail tank car unloading into a process. The OSHA process safety management

standard is considerably more comprehensive than the current regulations in § 174.67 of the HMR that apply to rail tank car unloading operations. Overlaying the requirements in § 174.67 with the OSHA process safety management standard creates a duplicative and redundant regulatory regime that is confusing, potentially costly, and unnecessary.

Other commenters assert that the applicability of the HMR should be determined based on the function, not on the status of the person performing the function. "[A]n individual's employment or occupation should [not] dictate whether the HMR is applicable to the functions being performed. Each entity performing these functions should be subject to the same operational requirements, including training. Thus, the HMR should be applicable to these functions regardless of the status of the person who is performing the action." (American Chemistry Council) Similarly, a commenter suggests that limiting the applicability of the HMR to loading and unloading activities performed by a carrier "has no rational basis in fact. From a safety perspective, there is no difference between an unloading activity performed by a carrier and that same activity performed by the consignee's employee. * * * If RSPA is concerned about unloading that occurs long after the hazardous materials have been delivered to the consignee, then RSPA should address that narrow issue, rather than create an artificial jurisdiction test that is dependent upon the identity of whom is conducting the regulated activity." (American Trucking Associations)

We agree with commenters who suggest that the function being performed should dictate whether the HMR should apply to that function. As should be apparent by the discussion of this issue in the NPRM and this final rule, our determination as to whether the HMR should apply to the unloading of rail tank cars into manufacturing processes is based on our analysis of the function being performed. Unloading of a bulk packaging directly into a manufacturing process is not a transportation function; such unloading is a manufacturing function and should be treated as such for purposes of applicability of the HMR. Indeed, unloading of a bulk packaging after a carrier has delivered it to a consignee, detached its motive power, and departed the consignee's premises should not be regulated differently from unloading of a non-bulk packaging after a carrier has delivered it to a consignee and departed the consignee's premises.

No commenter suggests that the act of emptying a non-bulk packaging when performed by a consignee after delivery should be regulated under the HMR. Such action clearly occurs after transportation is completed. The same is true of the act of emptying a bulk packaging after a carrier has delivered it to the consignee and departed the consignee's premises.

Commenters suggest that the proposed definition for "unloading incidental to movement" could result in confusion and ambiguity. "In simple situations where only one person is involved, the 'who is unloading' test may work quite well. Unfortunately, the reality of handling hazardous liquids is that both the consignee and the carrier are involved in the unloading because both parties have a strong interest in the safe handling of the materials. Even where the carrier is physically initiating and monitoring the unloading, the consignee is likely to be inspecting the receiving tanks, assuring scrubbers are functioning properly, monitoring pressures, checking for leaks and the like. * * * With this sharing of responsibilities, who is performing the unloading for the purposes of the Proposed Rule? Even if the carrier is primarily responsible for the unloading, the consignee arguably is performing unloading activities as well. This creates an ambiguity with respect to whether a particular unloading scenario is or is not transportation in commerce." (Unimin Corporation) Another commenter has a similar concern. "If more than one person is involved in the loading or unloading of hazardous materials, a determination by U.S. DOT should be made about who is *primarily* responsible for the loading or unloading, which would, therefore, determine whether that particular situation is or is not transportation in commerce as defined by the proposed rule. HM-223 also does not address which standard applies to loading or unloading operations that are done jointly by carrier and facility personnel. Multiple agencies enforcing different aspects of the loading, unloading and storage of hazardous materials could result in many differing interpretations of the same situation." (American Road and Transportation Builders Association)

We agree that the proposed definition could create some confusion when both carrier and consignee personnel are present and participating in an unloading operation. In this final rule, therefore, we are modifying the definition for "unloading incidental to movement" to specify that if carrier personnel are present during the

unloading of packaged hazardous materials from a transport vehicle or the unloading of a bulk package, such as a cargo tank or a rail tank car, into a storage tank or manufacturing process, then the unloading operation is considered to be incidental to the movement of the hazardous material and is subject to regulation under the HMR. This approach is consistent with our long-standing policy concerning hazardous materials incident reporting. Under §§ 171.15 and 171.16 of the HMR, carriers are required to report incidents that occur during the course of transportation. A carrier must report a loading or unloading incident in conformance with §§ 171.15 and 171.16 if carrier personnel are present at the time the incident occurs, even if carrier personnel are not participating in the loading or unloading operation. This is also consistent with current HMR requirements concerning unloading of cargo tanks in § 177.834(i)(2).

Note that, as with loading operations, even where the HMR specify requirements for unloading a packaging or container, OSHA requirements may also apply. For example, the HMR specify valving, piping, hose, and similar requirements as part of the specification packaging requirements for authorized transportation of hazardous materials and include periodic testing and maintenance requirements. In addition, for unloading operations involving liquefied compressed gases in cargo tanks, the HMR require an operator to develop and maintain operating procedures for emergency discharge control equipment and emergency shutdown of the unloading operation. OSHA regulations cover operational procedures for unloading operations with which a facility must comply and include requirements for facility equipment used for such unloading operations. Persons who perform unloading operations generally will have to comply with both the HMR and OSHA requirements. Similarly, EPA requirements for environmental protection that relate to unloading operations—such as requirements for secondary containment or vapor recovery—may also apply.

A commenter suggests that if the HMR are not applicable "to the unloading of tank cars at a consignee facility, * * * other agencies are going to get involved in the construction, test, inspection, marking, labeling, securement rules and regulations. How does RSPA plan to enforce the HMR in part, if not in whole, on an operation that is not subject to the HMR?" (Farmland) This commenter appears to misunderstand the implications of the NPRM proposal

concerning rail tank car unloading. The NPRM proposed to exclude from regulation under the HMR rail tank car unloading operations performed by consignee personnel after delivery of the rail tank car to the consignee's premises and departure of the rail carrier. However, other aspects of the HMR continue to apply to a rail tank car. For example, HMR requirements applicable to rail tank car construction, inspection, and maintenance continue to apply to a rail tank car even if the unloading operation involving such tank car is not subject to the HMR and, indeed, even if the rail tank car does not contain a hazardous material. Similarly, HMR requirements concerning rail tank car marking continue to apply to a rail tank car.

In addition, as proposed in the NPRM, requirements related to the protection of train and engine crews operating within a shipper or consignee facility, such as posting warning signs, setting hand brakes, and blocking the wheels of hazardous materials tank cars placed for unloading would continue to apply, not because the tank car is being unloaded incidental to movement but because unloading of a tank car has the potential to affect the safety of rail carrier personnel. These requirements apply whether or not the carrier is present during the unloading operation.

In summary, the fact that a non-transportation function involving a rail tank car is not regulated under the HMR does not negate the design, construction, and maintenance standards for the rail tank car, nor does it negate HMR requirements governing pre-transportation and transportation functions applicable to the rail tank car. Further, design, construction, and maintenance regulations may be enforced at any time, irrespective of whether the tank car is involved in the transportation of hazardous materials, so long as the tank car is marked to certify that it has been constructed and maintained in accordance with HMR requirements.

Commenters representing intermodal transfer facilities express concern about the NPRM proposals for consignee unloading of rail tank cars. As explained by commenters, "[m]anufacturers of hazardous and non-hazardous commodities contract with [intermodal transfer facilities] to terminalize their products in rail tank cars and, under their direction, transload said product into cargo tanks then deliver to the end user, the consignee. [The intermodal transfer facility] at no time takes title to any of the products that [it] handle[s], this is clearly stated in * * * terminal contracts. [The intermodal transfer

facility] appears as the consignee on the waybill only for the purpose of communicating to the carrier (the railroad) that the rail tank car is to arrive at one of our terminals.” (ACCU Chem Conversion, Inc.) Another commenter states that the NPRM proposals “could spell the death knell for intermodal facilities where hazardous materials are transferred in bulk because states and localities would be free to impose unreasonable requirements making the operation of transfer facilities impractical.” (Association of American Railroads) These commenters suggest that intermodal transfer operations should be considered transportation functions and, thus, urge us to retain the rail tank car unloading requirements currently in § 174.67 of the HMR.

We agree that a transloading operation at an intermodal transfer facility—that is, the act of directly transferring hazardous materials from one bulk packaging to another—is a function that should be regulated under the HMR. Transloading is a pre-transportation function in that it involves selection, preparation, and closing of packagings for the transportation of hazardous materials. The transfer of hazardous materials from one bulk packaging into another is a filling, or loading, operation as defined in this final rule. During transloading, the filling, or loading, of one bulk packaging occurs simultaneously with the emptying, or unloading, of a second bulk packaging. Further, a transloading operation at an intermodal transfer facility is a continuation of the movement of a hazardous material begun when a carrier takes possession of the hazardous material for the purpose of transporting it. Therefore, in this final rule, we are revising the definitions proposed in the NPRM for “pre-transportation functions” and “loading incidental to movement” and “unloading incidental to movement” to include transloading operations. We are also defining a new term—“transloading”—to mean the transfer of a hazardous material from one HMR-authorized bulk packaging to another for purposes of continuing the movement of the hazardous material in commerce.

Further, we agree that the rail tank car unloading regulations currently in § 174.67 of the HMR should be retained and applied to transloading of a hazardous material from a rail tank car to a cargo tank or other bulk hazardous materials packaging. Under Docket HM-212, we had proposed to revise the rail tank car unloading requirements to clarify and update them and account for technological advances. On March 27, 2000, we published a notice

withdrawing the HM-212 NPRM. We withdrew the proposals in the HM-212 NPRM related to cargo tank unloading because we addressed cargo tank unloading in a final rule issued under Docket HM-225A (64 FR 28030). We announced that we would address the issues raised in the HM-212 NPRM concerning the proposed rewrite of rail tank car unloading requirements in the HM-223 rulemaking. Indeed, a number of commenters to the HM-212 NPRM suggested that it should be broadened to address issues related to the definition of the term “in transportation” and clarification of the respective roles of OSHA and RSPA with respect to the transfer of hazardous materials. In this final rule, we are incorporating revisions proposed in HM-212. See the discussion below for specific revisions to this section.

Note that, for purposes of the HMR, “transloading” does not include operations that involve the transfer of a hazardous material from one packaging to another for purposes of mixing, blending, or otherwise altering the hazardous materials. Further, “transloading” does not include movement of product to or from a bulk storage tank. For purposes of the HMR, “transloading” is a pure transfer from one bulk packaging to another at an intermodal transfer facility; operations conducted at a shipper facility before a hazardous material is offered for transportation or at a consignee facility after transportation is complete are not “transloading” and are not subject to regulation under the HMR. Note also that, while the HMR apply to transloading operations at fixed facilities, regulations of other Federal or non-Federal entities may also apply to such facilities (see discussion below).

Storage incidental to movement. In the NPRM, we proposed to define “storage incidental to movement” to mean temporary storage of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material to transport it in commerce until the package containing the hazardous material is delivered to its destination, as indicated on shipping documentation. As proposed in the NPRM, storage incidental to movement would include temporary storage at a carrier facility where the package containing the hazardous material is to be transferred from one transport vehicle to another or from one transportation mode to another. Storage incidental to movement would also include the period during which a transport vehicle carrying hazardous

materials is parked temporarily at an en route point such as a safe haven, rail yard, marine terminal, or at a truck stop, motel, restaurant, rest area, or similar location. As proposed in the NPRM and consistent with current policy, neither storage of a hazardous material at an offeror facility prior to its acceptance by a carrier nor storage of a hazardous material at a consignee facility after it has been delivered by a carrier would be subject to the HMR.

Some commenters support the NPRM proposal for defining storage incidental to movement. “Storage of a hazardous material at an offeror facility prior to its acceptance by a carrier or storage of a hazardous material at a consignee facility after a carrier has delivered it should not be subject to the HMR. These areas should be under the jurisdiction of other agencies, such as OSHA and the local fire and building authorities.” (Monsanto) Similarly, some commenters agree that “when a hazardous material is transported to and held at a storage facility at the request of the consignee, as indicated on the shipping papers, transportation ends when the carrier delivers it to the storage facility and the storage facility signs for the material.” (International Warehouse Logistics Association)

Other commenters, however, oppose the NPRM proposals applicable to storage incidental to movement. As discussed above, a number of commenters suggest that the HMR should apply from the time that a hazardous material is packaged until the time that the package is delivered to the consignee; for bulk packagings, these commenters suggest that the HMR should apply until the bulk package is emptied at the consignee facility. These commenters assert that broad application of the HMR to storage at both consignee and consignor facilities assures uniform, national regulation of hazardous materials in commerce. Some commenters also assert that the NPRM proposals applicable to storage of hazardous materials represent an effort by RSPA to “relinquish” its authority to regulate “post-transportation” activities involving hazardous materials.

We disagree. As we stated in the NPRM, the proposals applicable to storage of hazardous materials during transportation are generally consistent with previous administrative determinations and letters of interpretation concerning the applicability of the HMR to hazardous materials stored incidental to movement (66 FR 32434–32435). The proposals do not represent an effort on our part to relinquish previously exercised regulatory authority. Rather, the

proposals clarify and make explicit in the HMR long-standing administrative and policy determinations concerning the applicability of the HMR to hazardous materials storage.

One commenter notes that the proposed definition of "storage incidental to movement" appears to include only storage of a material that is in the custody and control of a carrier from the time that the carrier picks up the shipment until it is delivered to the destination indicated on shipping documentation. "RSPA should * * * move or revise the section on 'Storage incidental to movement of hazardous materials' so that it covers storage by any person incidental to movement." (Firestone) We agree. There are situations during transportation when a shipment is out of the direct possession and control of the carrier while it is being stored incidental to its movement in commerce. In this final rule, we modified the definition of "storage incidental to movement" to include storage by any person between the time that a carrier takes physical possession of a hazardous material for the purpose of transporting it until the package containing the hazardous material is delivered to the destination indicated on shipping papers or other documentation. Note that, as stated in the NPRM, for a hazardous material that is consigned by an offeror to a storage facility rather than an end user, the material is no longer in transportation in commerce once it has been delivered to the storage facility.

The temporary holding of a package containing hazardous materials at a motor carrier terminal for consolidation with other packages is clearly within the meaning of storage incidental to movement of a hazardous material in commerce as defined in this final rule. Further, for through shipments, storage incidental to movement in commerce also includes the temporary holding of a package, freight container, rail car, or other instrument of containment of a hazardous material at a marine terminal pending the arrival of a vessel onto which it will be loaded or prior to its inland movement by rail or highway. Similarly, the holding of a freight container or trailer at a carrier's intermodal container transfer facility is within the meaning of storage incidental to movement of a hazardous material in commerce as defined in this final rule. Storage incidental to movement of hazardous materials in commerce is subject to requirements in the HMR.

The NPRM stated that storage of a hazardous material at a transfer facility where a hazardous material is repackaged prior to re-shipment is not

storage incidental to movement as we proposed to define it. Consistent with previous administrative determinations and interpretations, as cited in the NPRM (66 FR 32432), we proposed that movement of a hazardous material would end at the facility to which the hazardous material was consigned for repackaging. A number of commenters express concern about this aspect of our proposed definition for "storage incidental to movement." "The preamble to the proposed rule appears to contemplate that the Hazardous Materials Regulations would not apply to the storage of hazardous materials 'intended' for repackaging at transfer facilities. Storage activities at transfer facilities, which are incidental to transportation, should not be exempt from RSPA regulation. To do otherwise will at best create confusion as to whether RSPA or Environmental Protection Agency regulations apply, and at worst a dangerous regulatory void." (National Private Truck Council) Another commenter notes that "[T]here would be nothing materially different between the packages in storage that are destined for repackaging and those that are not. Storage is storage is storage. Second, it flies in the face of federal law intended to promote intermodal movement in order 'to achieve national goals for improved air quality, energy conservation [and] international competitiveness.' Third, it is contrary to established precedent. Intermodal movements of hazardous materials are critical to commerce. Previously, RSPA recognized this fact in preemption proceedings." (Institute of Makers of Explosives) Commenters ask that we clarify what we mean by the term "repackaging" and explain why storage of hazardous materials prior to repackaging is not included in our definition of "storage incidental to movement." "[We] recommend a detailed definition of the term 'repackaging' in order to reduce uncertainty about RSPA's intent concerning this activity. * * * Is it RSPA's intent to assert, as it has in the past, that repackaging is a "covered subject" under [Federal hazmat law] and that state regulations pertaining to repackaging that are not substantively the same as corresponding federal regulations are subject to preemption?" (Northeast Waste Management Officials Association)

As the commenters suggest, the act of repackaging a hazardous material for transportation is a covered subject under Federal hazmat law. 49 U.S.C. 5125(b). Repackaging is a pre-transportation function as that term is

defined in this final rule. Persons who repackaging a hazardous material must comply with all applicable HMR requirements concerning the selection and preparation of a hazardous materials package. Because the act of repackaging a hazardous material is a covered subject under Federal hazmat law, non-federal requirements that are not substantively the same as the HMR requirements applicable to repackaging are preempted.

The fact that repackaging is a regulated activity under the HMR does not mean that every activity associated with repackaging is also regulated under the HMR. For example, transportation of a hazardous material consigned to a facility for repackaging, as indicated on shipping papers or other documentation, ends when the hazardous material is delivered to the facility. Subsequent storage of the hazardous material prior to its repackaging is not storage incidental to movement as that term is defined in this final rule and is not regulated under the HMR. Similarly, storage of the hazardous material after it has been repackaged but prior to the time a carrier accepts it for transportation is not storage incidental to movement as that term is defined in this NPRM and is not regulated under the HMR. Moreover, the facility at which repackaging occurs may be subject to OSHA and/or EPA regulations governing worker safety and environmental protection and to non-federal regulations applicable to community right-to-know, fire protection, worker protection, building codes, zoning requirements, and the like.

Many commenters address the NPRM proposals concerning storage of rail cars on leased track. The NPRM proposed two alternatives for applying the HMR to such storage. First, storage on leased track could be considered storage by a consignee after movement in transportation of the rail car has been completed, as indicated by the destination on shipping documentation. In such situations, the rail carrier would be viewed as performing a warehousing function on behalf of the consignee, not a transportation function. Alternatively, storage of rail cars on leased track (other than leased track immediately adjacent to the shipper or consignee facility and exclusively for the shipper or consignee's use) could be considered storage incidental to movement because the cars have not been physically delivered to the consignee, and the carrier retains physical possession of the shipment.

Commenters who support the first alternative agree that "rail cars stored on leased track should not be considered "storage incidental to movement" in commerce subject to applicable HMR requirements. Rail cars stored on leased track * * * would then be subject to local regulations, including Federal Risk Management Program (RMP) * * * regulations. * * * This information would assist the local emergency response agencies [to] assess the threat and security of leased tracking." (Contra Costa Health Services)

Commenters who support the second alternative assert that "[e]stablishment of a system where rail cars on the general railroad system do not have to comply with RSPA's regulations addressing shipping papers, securement, and placarding would undermine safety. * * * Furthermore, rail cars on leased track are not always stationary. They are moved. Surely the public interest requires RSPA to apply its hazardous materials regulations to rail cars containing hazardous materials moving on railroad tracks." (Association of American Railroads) Commenters also state that "[t]here could be severe consequences to railroads and their customers were RSPA to conclude that hazardous materials cars on leased track were outside the scope of RSPA's regulations. States and localities could impose unreasonable secondary containment and other requirements making the placement of tank cars on leased track infeasible. There may be inadequate capacity to handle these cars in any other manner, thus dramatically affecting the ability of railroads to transport these cars to destination and the ability of the railroads' customers to continue their operations." (Association of American Railroads) Commenters also suggest that "storage of rail cars on leased track should be considered "incidental" because the cars have not been delivered to the ultimate consignee." (Farmland) As well, commenters state that rail cars "stored on leased track should be considered in transportation. * * * Interim storage locations are not the ultimate destination of the shipments, and the railroad maintains effective custody and control of the shipments." (Monsanto)

After consideration of the comments received on this issue and in consultation with the Federal Railroad Administration (FRA), we conclude that rail cars stored temporarily on leased track, except for leased track that is outside the control and responsibility of the rail carrier and used exclusively for the movement of cars shipped to or from the lessee, is storage incidental to movement and subject to regulation

under the HMR. This determination is consistent with previously articulated interpretations (as discussed in the NPRM, 66 FR 32435), with current FRA policies, and with the definitions adopted in this final rule. See specifically the discussion of the "general railroad system of transportation" under the section entitled "THE EXTENT AND EXERCISE OF FRA'S SAFETY JURISDICTION" in Appendix A to 49 CFR Part 209.

The concepts embodied by the term "leased track" are often taken out of context. As currently set forth in § 171.8 of the HMR, "private track or private siding" is defined to mean:

Track located outside of a carrier's right-of-way, yard, or terminals where the carrier does not own the rails, ties, roadbed, or right-of-way and includes track or a portion of track which is devoted to the purpose of its user either by lease or written agreement, in which case the lease or written agreement is considered equivalent to ownership.

The key term in the definition is "Devoted to the purpose of its user," a phrase equivalent to the idea of "exclusive use" or "ownership." Either track is used by a railroad, or it is devoted to the exclusive use of another entity. The key to defining "private track" is not the existence of a lease or even a deed of title, but the devotion of that track to the sole purpose of some person other than the railroad. Track may be leased for many purposes for the convenience of the lessee. Many of these leases do not exclude the railroad from using the track for its transportation purposes in addition to the lessee's purposes. Where the railroad has not ceded its care, custody, and control of the track to the lessee, such track remains railroad track and not private track. Where the lessee (in a transportation context, usually a shipper or receiver of rail cars) assumes the care, custody, and control of the track, the track is "devoted" to the purposes of its user and is private track. Rail cars containing hazardous materials that are stored on private track are not stored incidental to movement and are not subject to the HMR; rail cars containing hazardous materials that are stored on railroad track are stored incidental to movement and are subject to the HMR. As explained below, to avoid future misinterpretation, in this final rule we are amending the definition in § 171.8 of "private track or private siding."

As noted above, to conclude that a rail car is stored incidental to movement, we must determine whether the railroad carrier actually exercises ownership or control over the cars and trackage; the facial legal status of the cars and trackage, as expressed in a lease or

written agreement between the parties, is not determinative. Private track may be located directly adjacent to a shipper or consignee facility or within a facility some distance from either the shipper or ultimate consignee. The lessee may have exclusive use of the leased track, or the track also may be used for movement of rail cars other than those of the shipper or consignee. Notwithstanding the terms of any written agreement between the lessee and the rail carrier, if the general system railroad controls the track, then the track is not "private" track for purposes of the HMR.

Railroads often agree to store cars along the route to their ultimate destinations due to fluctuation in seasonal demand for the commodities and limited track space at a consignee's facility. Examples are liquefied petroleum gas, often held at locations distant from its end user pending the demand for the product in cold weather, and anhydrous ammonia, often held until the agricultural cycle requires forwarding to a consignee. In these situations, tank cars may be consigned to interim storage locations on track that is leased for business purposes not relevant to the safety of the cars or the products they contain. These interim storage locations are not the ultimate destination of the shipments, and, in almost all such cases, the railroad maintains effective custody and control of them, which in this final rule is the primary consideration for determining the applicability of the HMR to transportation functions. However, the fact that a hazardous material is in a tank car does not necessarily mean that a railroad is responsible for it. If an entity elects to accumulate hundreds of cars of liquefied petroleum gas or anhydrous ammonia on its own property in order to have supplies readily available when needed, this business decision removes the car from transportation for purposes of the HMR.

Under the Federal Railroad Safety Act (FRSA) and other rail safety laws, FRA has treated leased track as being outside the general railroad system and, thus, outside the scope of FRA's rail safety regulations only if such track is "immediately adjacent" to a plant facility and the "lease provides for, and actual practice entails, exclusive use of that trackage by the plant railroad * * *" 49 CFR part 209, Appendix A. Regardless of the terms of a lease or other written agreement, cars on railroad tracks in railroad yards or sidings distant from the consignee are still on the general railroad system and are ordinarily within the care, custody, and control of the railroad. Even if a shipper or consignee leases such track,

it is rarely for the exclusive use of the shipper's or consignee's cars, and, even if so restricted, the track is not ordinarily in any practical sense controlled by the distant shipper or consignee. Further, the risks associated with rail transportation of hazardous materials exist whenever a rail car loaded with hazardous materials is on the general railroad system. However, where cars are stored on private track—that is, on track the use of which by actual practice is restricted to movements of the lessee's cars and over which the railroad exerts no control and has no responsibility for the cars on that trackage—custody and control of the rail cars shifts to the lessee, and the storage is not subject to the HMR.

FRA's discussion of plant railroad trackage in Appendix A to 49 CFR part 209 is in accord with the definition in § 171.8 of the HMR of "private track or private siding" as modified in this final rule. In this final rule, we are also modifying the definitions proposed in the NPRM to clarify that storage of rail cars containing hazardous materials is storage incidental to movement and subject to regulation under the HMR, except for storage of rail cars on private track. Note that rail cars containing hazardous materials that are stored temporarily on railroad track that does not meet the definition of "private track or siding" are subject to all applicable HMR requirements during such storage. For example, rail cars must at all times be accompanied by appropriate shipping documentation, including emergency response information and an emergency response telephone number in accordance with Subparts C and G of Part 172. Further, placards required by Subpart F of Part 172 must remain on the rail cars throughout the time they are stored on public track. In addition, tank cars stored on railroad track that does not meet the revised definition of "private track or siding" are subject to the requirements for security plans in Subpart I of Part 172. The security plan must include an assessment of possible transportation security risks and appropriate measures to address the assessed risks. Specific measures put into place by the plan may vary commensurate with the level of threat at a particular time. At a minimum, a security plan must include elements related to personnel security, unauthorized access, and en route security.

As we noted in the NPRM, continuing the current policy that rail cars stored on railroad track are stored incidental to movement may necessitate separate rulemaking to address related safety and emergency response issues. For

example, we are considering whether the § 174.14 requirements concerning expedited movement should apply to such incidental storage. Further, we are considering how to assure that emergency response information relevant to the specific hazardous materials stored in rail cars on leased track is available as needed to assist local officials to plan for and respond to incidents involving such rail cars.

Several commenters asked us to clarify the applicability of the HMR to the storage of hazardous wastes subject to Resource Conservation and Recovery Act (RCRA) requirements. "Under the Resource Conservation and Recovery Act (RCRA), EPA storage requirements do not kick in for up to ten days if hazardous waste is packaged according to the HMR. In adopting the so-called 'ten-day' rule, 'EPA believe[d] that transporters who hold hazardous waste for a short period of time in the course of transportation should not be considered to be storing hazardous wastes and should not be required to obtain an RCRA permit or [to] comply[] with the substantive requirements for storage for the holding of wastes which is incidental to normal transportation practices.'" (Institute of Makers of Explosives) Commenters are concerned as to "how the proposed rule will apply to RCRA 10-day transfer facilities where hazardous wastes are temporarily stored en route to their destination. EPA allows transporters to store hazardous wastes for up to 10 days at transfer facilities without the need to obtain RCRA permits. These hazardous wastes are considered to be in transit from a customer to a [treatment, storage, or disposal (TSD)] facility. We assume that DOT's basic interpretation that a hazardous material is in transportation until it is 'delivered to its destination as indicated on the shipping paper' means that hazardous wastes held at a 10-day transfer facility are in 'storage incidental to transportation,' provided the shipping paper indicates that a TSD facility is the wastes' destination." (Environmental Technology Council) Commenters are also concerned that the proposed definition for "storage incidental to movement" in the NPRM is inconsistent with current policy and practice. In accordance with EPA regulations, the ten-day storage provision applies to facilities at which hazardous wastes may be repackaged during the ten-day storage period. The NPRM discussion of issues related to "storage incidental to movement" indicated that storage of a hazardous material at a carrier facility where a hazardous material is repackaged prior

to reshipment is not storage incidental to transportation as we proposed to define it.

The EPA regulations addressing the transportation of hazardous wastes include a provision addressing storage at hazardous waste "transfer facilities." See 40 CFR 263.12. EPA regulations define a "transfer facility" to mean a "transportation related facility * * * where shipments of hazardous waste are held during the normal course of transportation." See 40 CFR 260.10. These facilities normally conduct transfers of waste containers between transport vehicles and/or modes of transportation, and the transfer activities conducted there may include activities which today's rule describes as consolidation of packages, intermodal container transfers, through shipments, or repackaging. These are activities that are common to hazardous waste transfer facilities, and thus there is considerable similarity or overlap between the activities that occur at RCRA transfer facilities and the activities discussed in today's rule as storage incidental to movement.

The substantive EPA regulation addressing hazardous waste transfer facilities states that a transporter may store hazardous wastes at a transfer facility without a RCRA storage permit for up to 10 days, provided that the waste is stored in DOT approved packages. 40 CFR 263.12. This provision is intended only to provide transporters who store hazardous wastes in the normal course of transportation at transfer facilities with an exemption from the requirement to obtain a RCRA storage permit for their temporary storage activities, and to exempt them from the various substantive requirements that would otherwise apply to RCRA-permitted treatment, storage, or disposal facilities under 40 CFR part 264 or 265.

A transfer facility under RCRA regulations is strictly an intermediate, temporary storage facility operated by a transporter. Under EPA policies, a RCRA transfer facility cannot be the destination facility named on the manifest for the receipt and management of the waste. Rather, the transfer facility storage and transfer activities occur while the hazardous waste shipment is considered to be under the custody and control of one of the hazardous waste transporters identified on the manifest. The manifest shows any changes of custody among transporter companies, but it does not record waste receipts and transfers at transfer facilities. As long as the transportation-related facility meets the criteria established by EPA regulation

for “transfer facilities” (*i.e.*, storage in the normal course of transportation, storage in DOT approved packages, and storage not exceeding 10 days), then the storage and related transfer activities are allowed under RCRA regulations, and the transfer facility qualifies for the exemption from RCRA permitting.

The transfer facility permitting exemption described in EPA regulations is available to RCRA transfer facilities regardless of whether they conduct through-shipment transfers, intermodal container transfers, consolidation activities, or repackaging activities. Nothing in today’s rule discussing storage of hazardous materials at transfer facilities and repackaging activities is intended to affect in any way whether a hazardous waste transfer facility is eligible for the permitting exemption for 10-day storage at RCRA transfer facilities regulated under 40 CFR 263.12.

Moreover, since a RCRA transfer facility cannot be the destination facility on the hazardous waste manifest, the discussion in today’s rule—indicating that transportation under the HMR ends upon delivery of hazardous materials to a transfer facility to which materials have been consigned for repackaging—is simply not applicable to RCRA transfer facilities. This rule’s policy on consignment of materials to a transfer facility is limited to those instances where the consignment to the facility for repackaging is indicated specifically on the shipping paper or other documentation, *i.e.*, where the facility that will engage in repackaging is shown by the shipping paper to be the destination for that movement. A RCRA transfer facility conducting repackaging activities for hazardous waste shipments will not appear as the destination to which a hazardous waste shipment is being consigned. Therefore, our interpretation addressing consignments for repackaging is not applicable to a RCRA transfer facility. Instead, the more general policy on storage incidental to movement under the HMR applies continuously to the holding of hazardous wastes at RCRA transfer facilities. In other words, for the entire period of time that hazardous wastes are transported to, arrive at, and are held by a RCRA transfer facility, transportation under the HMR continues until the hazardous waste is delivered to the permitted facility named as the destination facility on the hazardous waste manifest.

However, our interpretation that transportation under the HMR ends upon delivery to a consignment facility conducting repackaging applies fully to a RCRA permitted facility that receives

a hazardous waste shipment as the destination facility on a hazardous waste manifest, and then conducts repackaging activities. Many waste management firms with RCRA permits have integrated transportation and waste treatment, storage, and disposal operations. It is not uncommon for such a waste management firm to pick up small waste shipments from numerous generator sites, and then transport them to one of its permitted sites for storage and consolidation or repackaging. The permitted storage facility is listed on the manifest as the destination facility for the waste shipment, and so cannot be considered to be a “transfer facility” under RCRA regulations. However, if such a facility receives a waste shipment that is consigned to it under the manifest for repackaging, this shipment would fall within the policy in today’s rule on consignments for repackaging. Transportation under the HMR would end upon delivery to the destination facility on the manifest. The repackaging of the waste would then give rise to the start of pre-transportation functions aimed at preparing the repackaged waste shipment for its transportation to another destination facility under a new hazardous waste manifest.

E. State/Local Requirements and Preemption

One of the primary purposes of Federal hazmat law is to assure a nationally uniform set of regulations applicable to the transportation of hazardous materials in commerce. Thus, the preemption provisions of Federal hazmat law generally preclude non-Federal governments from imposing requirements applicable to hazardous materials transportation if:

(1) Complying with the non-Federal regulation and complying with Federal hazmat law or the HMR or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible (dual compliance test; 49 U.S.C. 5125(a)(1)); or

(2) The non-Federal requirement is an obstacle to carrying out Federal hazmat law, the HMR, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security (obstacle test; 49 U.S.C. 5125(a)(2)).

Further, Federal hazmat law preempts a non-Federal requirement applicable to any one of several specified covered subjects if it is not substantively the same as Federal hazmat law, the HMR, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security

(covered subjects test; 49 U.S.C. 5125(b)).

The HMR are not minimum requirements that other jurisdictions may exceed if local conditions warrant; rather, the HMR are national standards and must be uniformly applied across jurisdictional lines. However, another Federal law may authorize non-Federal requirements. 49 U.S.C. 5125(a) and (b). Also, RSPA may waive preemption of a non-Federal requirement if it: (1) provides the public with at least as much protection as requirements of Federal hazmat law and the HMR, and (2) does not impose an unreasonable burden on commerce. 49 U.S.C. 5125(e).

Commenters generally support the strong preemption provisions in Federal hazmat law and credit preemption of inconsistent state and local hazardous materials transportation requirements for contributing to the strong hazardous materials transportation safety record. As discussed above in this preamble, many commenters are concerned that the NPRM undermines national regulatory uniformity and opens the door to inconsistent and conflicting regulation of hazardous materials by state, local, and tribal governments. We do not agree that the NPRM’s proposals for defining the parameters of the applicability of the HMR undermine the preemption provisions of Federal hazmat law. As noted several times herein and in the preamble to the NPRM, the proposals are generally consistent with current provisions in the HMR and with current policies outlined in letters of interpretation, preemption determinations, and other administrative decisions. The fact that numerous commenters are apparently unfamiliar with these current requirements merely highlights the need to clarify the applicability of the HMR in the HMR itself, which is the precise purpose of this final rule. This final rule clarifies for the regulated industry and for state, local, and tribal governments those areas where non-Federal regulation is likely to be preempted and those areas where non-Federal agencies may impose regulations.

Several commenters suggest revisions to the language proposed in the NPRM in § 171.1(f) to clarify where and to what functions non-Federal requirements may apply. For example, one commenter suggests that this section reference the preemption standards in subsection C of 49 CFR part 107 rather than repeat the standard in the HMR. We believe that such repetition in the HMR is helpful; however, we have revised this section to indicate that procedures for preemption

determinations can be found in Part 107.

The preemption provisions of Federal hazmat law effectively preclude state, local, and tribal governments from regulating pre-transportation functions, as defined in this final rule, in a manner that differs from the Federal requirements if the non-Federal requirement is not authorized under another Federal law and the non-Federal requirement fails the dual compliance, obstacle, or covered subject test. Examples of such pre-transportation functions include: (1) Determining the hazard class of a hazardous material; (2) selecting a hazardous materials packaging; (3) filling a hazardous materials packaging; (4) transloading a hazardous material at an intermodal transfer facility from one HMR-authorized bulk packaging to another HMR-authorized bulk packaging for the purpose of continuing the movement of the hazardous material in commerce; (5) securing a closure on a filled hazardous materials package or container or on one containing a residue of a hazardous material; (6) marking a package to indicate that it contains a hazardous material; (7) labeling a package to indicate that it contains a hazardous material; (8) preparing a shipping paper; (9) providing and maintaining emergency response information; (10) reviewing a shipping paper to verify compliance with the HMR or international equivalents; (11) for persons importing a hazardous material in to the United States, providing the shipper with information as to the requirements of the HMR that apply to the shipment of the material while in the United States; (12) certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR; (13) blocking and bracing a hazardous materials package in a freight container or transport vehicle; (14) segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo; and (15) selecting or providing placards for a transport vehicle to indicate that it is carrying hazardous materials. We have not attempted, in this final rule, to identify every function that is a pre-transportation function—that is, a function performed in advance of transportation in commerce to prepare a shipment for transportation in commerce or that affects the safety of the shipment in transportation in commerce. State, local, or Indian tribe regulation of pre-transportation functions not specifically identified in

this final rule may also be preempted under Federal hazmat law.

Unless the Secretary waives preemption, the preemption provisions of Federal hazmat law effectively preclude state, local, and tribal governments from regulating transportation functions, as defined in this final rule, in a manner that differs from the Federal requirements if the non-Federal requirement is not authorized by another Federal law and the non-Federal requirement fails the dual compliance, obstacle, or covered subject test. Examples of such transportation functions include: (1) Movements of hazardous materials in commerce—that is, the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel; (2) loading of a hazardous material onto a transport vehicle, aircraft, or vessel or into a bulk packaging; (3) unloading of a hazardous material from a transport vehicle, aircraft, or vessel or from a bulk packaging when carrier personnel are present; and (4) storage of a hazardous material between the time that a carrier takes possession of the material until it is delivered to its destination as indicated on shipping documentation.

State, local, and tribal governments may impose regulations on hazardous materials-related functions that are not covered by the HMR or Federal hazmat law, except where RSPA has specifically determined that regulation of a hazardous materials-related function is not necessary. For example, hazardous materials that are not being transported in commerce as defined in this final rule are subject to applicable non-Federal community right-to-know, fire protection, worker protection, environmental protection, building code, and zoning requirements. Moreover, although the HMR apply to pre-transportation functions as defined in this final rule, the facilities within which pre-transportation functions are performed could be subject to non-Federal regulations that do not affect the performance of the pre-transportation function—again, fire protection, worker protection, environmental protection, building code, and zoning requirements may apply. Thus, state and local regulations applicable to hazardous materials stored at a consignee's facility or at a manufacturing facility awaiting use in a manufacturing process would not be preempted (PD-9(R), 60 FR 8787, February 15, 1995). Similarly, the HMR do not apply to regulation of consignee storage tanks; therefore, state or local requirements as to the types of storage tanks into which a hazardous material may be unloaded from a tank car are not

preempted (PD-9(R), 60 FR 8788, February 15, 1995). Further, local fire code requirements that do not apply to the transportation of hazardous materials in commerce are not preempted (PD-14(R), 63 FR 67506, December 7, 1998).

The above discussion is intended as general guidance only. We will continue to make preemption determinations applicable to specific non-Federal requirements on a case-by-case basis, using the obstacle, dual compliance, and covered subjects tests provided in Federal hazmat law.

F. OSHA, EPA, and ATF Programs and Regulations

OSHA. On December 29, 1970, Congress enacted the Occupational Safety and Health Act of 1970 (OSH Act) for the purpose of assuring safe and healthy workplaces. Under the OSH Act, every employer engaged in a business affecting commerce has a general duty to furnish each of its employees a workplace free from recognized hazards causing, or likely to cause, death or serious physical harm. In addition, employers are required to comply with all safety and health standards issued under the OSH Act that are applicable to working conditions involved in their businesses.

OSHA has promulgated a number of standards that address the handling of hazardous materials at fixed facilities. These include standards governing process safety management of highly hazardous chemicals and requirements for handling and storage of specific hazardous materials, such as compressed gases, flammable and combustible liquids, explosives and blasting agents, liquefied petroleum gases, and anhydrous ammonia. OSHA standards also address hazard communication requirements at fixed facilities, including container labeling, retention of transportation placards, and other forms of warning, material safety data sheets, and employee training. (29 CFR 1910.1200) In addition, facilities that handle and store hazardous materials must comply with OSHA standards that address more general types of workplace hazards, such as walking and working surfaces, means of egress, noise, air quality, environmental control, personal protective equipment, and fire protection.

EPA. EPA's mission is to protect human health and the natural environment from pollution. More than a dozen major statutes or laws form the legal basis for EPA's programs. Several of these statutes establish programs covering facilities that handle hazardous materials. They include:

- The Emergency Planning and Community Right-to-Know Act (EPCRA; 42 U.S.C. 11011 *et seq.*) requires facilities to provide information concerning the hazardous materials they have on site to states, local planners, fire departments, and, through them, to the public. This information provides the foundation for both community emergency response plans and public-industry dialogues on risks and risk reduction. EPCRA also requires facilities to report releases of certain hazardous materials to state and local emergency responders.

- The Clean Air Act (42 U.S.C. 7401 *et seq.*) establishes a general duty for facility owners or operators to identify hazards that may result from accidental releases of extremely hazardous substances, design and maintain a safe facility as needed to prevent such releases, and minimize the consequences of releases that do occur. EPA has promulgated a list of substances that, in the event of an accidental release, are known to cause or may be reasonably expected to cause death, injury, or serious adverse effects to human health or the environment. EPA also has established a threshold quantity for each listed chemical. Stationary sources that have more than a threshold quantity of a regulated substance in a process are subject to the accident prevention regulations promulgated by EPA, including the requirement to develop risk management plans.

- The Resource Conservation and Recovery Act (RCRA; 42 U.S.C. 321 *et seq.*) gave EPA the authority to control hazardous waste from "cradle to grave." This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA requires hazardous waste transportation regulations to be consistent with transportation regulations issued under Federal hazmat law.

- The Clean Water Act (33 U.S.C. 1251 *et seq.*) establishes authority for the Spill Prevention, Control, and Countermeasure (SPCC) program for non-transportation-related facilities. The SPCC regulations are designed to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or onto the navigable waters of the United States or adjoining shorelines.

EPA is also authorized to regulate hazardous materials, and its statutes do not expressly preclude EPA from regulating hazardous materials activities regulated by RSPA, although EPCRA does exempt "transportation, including the storage incident to such transportation" from many of its

requirements. While most of EPA's programs focus on fixed facilities, EPA also regulates transportation of hazardous wastes under RCRA, as noted above. Moreover, loading, unloading, and storage of hazardous materials generally occur at fixed facilities. Recognizing the potential for regulatory overlap, EPA has taken into account RSPA regulation of hazardous materials in deciding whether and how to regulate. Consequently, the decisions RSPA makes in this rulemaking may affect some EPA programs. The nature and extent of that effect will depend on EPA's interpretation and implementation of its statutes and regulations, some of which we describe further below.

ATF. Congress enacted Title XI of the Organized Crime Control Act of 1970 to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. Chapter 40 of the 1970 Act is entitled Importation, Manufacture, Distribution and Storage of Explosive Materials. ATF has been delegated the authority to enforce Chapter 40. ATF has promulgated regulations contained in 27 CFR part 555 to implement its provisions.

For example, § 555.30 contains requirements for licensees, permittees, carriers of explosives materials, and other persons to report the theft or loss of explosive materials within 24 hours of discovery. ATF regulations also contain detailed provisions governing the storage of explosive materials. These storage regulations address numerous issues including: (1) A requirement to inspect storage facilities at least every seven days (section 555.204); (2) where magazines may be located (section 555.206); (3) construction requirements of magazines, including locking mechanisms (sections 555.207–211); and (4) quantity restrictions and restrictions on the items that may be stored together (section 555.213).

Relationship of Federal hazmat law to other statutes and regulations. Federal hazmat law does not preempt other Federal statutes nor does it preempt regulations issued by other Federal agencies to implement statutorily authorized programs. The provisions of this final rule are intended only to clarify the applicability of the HMR to specific functions and activities. It is not appropriate for DOT to attempt to clarify the applicability of other Federal agencies' statutes or regulations to particular functions or activities. However, it is important to note that facilities at which pre-transportation or

transportation functions are performed must comply with applicable OSHA standards and state or local regulations applicable to physical structures—for example, noise and air quality control standards, emergency preparedness, fire codes, and local zoning requirements. Facilities must also comply with applicable state and local regulations for hazardous materials handling and storage operations and with state and local regulations that address environmental protection.

Facilities at which pre-transportation or transportation functions are performed may be subject to EPA regulations and additional OSHA standards applicable to hazardous materials at fixed facilities. For example, facilities that store hazardous materials may be subject to EPA's risk management; community right-to-know; hazardous waste tracking and disposal; and spill prevention, control and countermeasure program requirements, and OSHA's process safety management and emergency preparedness requirements. Further, facilities at which pre-transportation or transportation functions are performed may also be subject to ATF regulations applicable to licensing and permitting and safe handling, including storage, of explosives. Questions as to the applicability of EPA or ATF regulations or standards to particular facilities or operations should be directed to the appropriate EPA, OSHA, or ATF office.

OSHA Programs and Standards. The OSH Act vests OSHA with primary responsibility for promulgating and enforcing workplace safety and health standards. Under the OSH Act, every employer has a general duty to provide its employees with a workplace free from recognized hazards that are likely to cause death or serious physical harm and to comply with occupational safety and health standards. Occupational Safety and Health Act of 1970 (OSH Act) (84 Stat. 1590, as amended, 29 U.S.C. 653(b)(1)).

To avoid duplicative regulation, section 4(b)(1) of the OSH Act provides:

Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies * * * exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. (Emphasis added.)

However, when enacting and codifying the Federal hazmat law and several other Federal statutes, Congress recognized that OSHA is the most appropriate agency for addressing certain workplace hazards and, therefore, included explicit language that preserves OSHA's regulatory

authority in areas where it might otherwise be preempted. Such "reverse preemption language" functions to nullify any effect the OSH Act's 4(b)(1) provision might otherwise have and thus ensures that OSHA's standards remain applicable.

Even without the reverse preemption language, OSHA would only be precluded from applying its standards to facilities that perform pre-transportation and transportation functions if DOT were to "exercise" its statutory authority, under Federal hazmat law, to prescribe or enforce occupational safety and health standards of regulations at these facilities. The Supreme Court recently held that mere possession by another Federal agency of unexercised authority is insufficient to displace OSHA's jurisdiction. *Chao v. Mallard Bay Drilling, Inc.*, 524 U.S. 235, 241 (2002). The Court further held that a Federal agency's minimal exercise of some authority over certain working conditions does not result in complete preemption of OSHA jurisdiction. *Id.* Because we neither affirmatively regulate the working conditions at facilities where pre-transportation and transportation functions are performed, nor assert comprehensive regulatory jurisdiction over the working conditions at these facilities, OSHA's standards and regulations would continue to apply at these facilities even in the absence of reverse preemption language. This final rule makes clear that we do not intend to exercise our statutory authority in a manner that precludes OSHA from regulating at facilities where pre-transportation and transportation functions are performed.

In the NPRM discussion of OSHA authority, we stated that functions regulated under the HMR should not also be subject to conflicting regulation by state and local governments and that other Federal requirements should be consistent with the HMR. At the same time, the HMR do not address the work environment within which such functions are performed nor do the HMR address the working conditions applicable to employees performing such functions. It is not appropriate for RSPA to become extensively involved in developing and enforcing a complex regulatory scheme covering working conditions for hazardous materials employees who, although performing various functions regulated under the HMR, are located in facilities that have characteristics similar to those of many industrial workplaces.

One commenter suggests that "allowing OSHA to regulate hazardous materials transportation workers opens

the door to a myriad of different state regulations covering these activities, as only RSPA is capable of preempting state occupational safety and health regulations that differ from the federal standard." This commenter further suggests that "RSPA consider incorporating by reference applicable OSHA rules. This option would allow RSPA to avail itself of OSHA's expertise without duplicating resources. * * * The primary benefit of such a strategy would be the promulgation of uniform hazardous materials transportation worker safety standards that would apply nationwide * * *" (American Trucking Associations) Other commenters suggest that RSPA could utilize the notice-and-comment rulemaking process to propose hazmat employee safety regulations, based on OSHA requirements, for inclusion in the HMR. "[W]e note that the Administrator has ample resources to publish a proposal, evaluate comments as to the efficacy and applicability of the proposed standard to hazmat transportation safety and craft a final rule. For years, the Administrator has done this with respect to consensus standards published by entities both domestic and international, and we see no reason why this successful approach can't be replicated with respect to OSHA and EPA." (National Tank Truck Carriers)

We disagree. As we stated in the NPRM, the OSH Act permits states to adopt and enforce worker safety standards that may be more stringent than the standards promulgated by OSHA. By contrast, Federal hazmat law preempts many state and local laws and regulations applicable to hazardous materials transportation that are not the same as the Federal requirements in the HMR. If we were to incorporate by reference OSHA's standards, then this could prevent states and localities from adopting more stringent worker safety standards and would thus undermine the intent of Congress as clearly expressed in the OSH Act. On the other hand, because OSHA standards are promulgated under authority of the OSH Act, states would be permitted to adopt more stringent requirements irrespective of the preemption provisions of Federal hazmat law. We do not believe that incorporating certain OSHA standards into the HMR would result in uniform Federal regulation of transportation worker safety in a manner consistent with Federal hazmat law or the OSH Act.

The NPRM proposed no change to the current division of responsibilities between OSHA and RSPA for the regulation of hazardous materials.

OSHA has concurrent authority in this area, and its standards protect workers who perform pre-transportation and other functions. Further, Congress authorized OSHA, rather than the Secretary of Transportation, to promulgate regulations applicable to workplace safety and occupational health, even in facilities where pre-transportation functions are performed. Such facilities are not excepted from OSHA requirements merely because certain of the activities performed at the facility are subject to HMR requirements. The facility must assure that functions subject to the HMR are performed in accordance with the HMR and must also assure that the workplace in which the functions are performed conforms to applicable OSHA requirements for occupational health and safety and that workers who perform such functions are protected from hazards.

Where hazmat employees perform pre-transportation functions as defined in this final rule, the HMR apply to the function being performed, and OSHA's requirements for occupational safety and health apply to the working conditions applicable to the hazmat employee performing the function. Examples include hazmat employees working in chemical plants, manufacturing facilities, and warehouses who determine a material's hazard class under the HMR and prepare packages for shipment. Preparation of hazardous materials packages for shipment must be performed in accordance with the HMR; however, OSHA standards apply to the working conditions under which the function is performed and to measures necessary to protect the employee performing the function, such as protective clothing and breathing equipment. The same is true for transloading operations at intermodal transfer facilities—the transloading function is regulated under the HMR, while OSHA regulations apply to the working conditions under which transloading is performed and the measures necessary to protect the employee performing transloading operations.

The relationship between the OSHA regulations and the HMR for transportation functions is more complex. Congress reauthorized Federal hazmat law in 1994 to "provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce." The "risks to life inherent in the transportation of hazardous material" include risks to both the general public and to transportation

workers, such as airline, railroad, maritime, and motor carrier employees. Protection of the public generally and employees in particular is necessarily an integrated undertaking. Thus, the HMR include requirements aimed at protecting both the general public and employees of hazardous materials carriers who perform transportation functions. For example, the HMR include a variety of requirements for communication of the hazards associated with a specific hazardous materials shipment, such as shipping papers, package marks and labels, and placards. The HMR also require a shipping paper to include a telephone number for information about responding to an emergency involving the shipment. A shipper must also include emergency response information about the specific hazardous material being shipped with the documentation that accompanies the shipment. These hazard communication requirements are intended to assist emergency responders to handle hazardous materials transportation incidents. The HMR also require hazmat employees (employees who perform functions that affect the safe transportation of a hazardous material) to receive safety training concerning emergency response information for the materials handled, protective measures, and methods and procedures for avoiding accidents. The HMR specify that training provided in accordance with OSHA requirements may be used to satisfy the HMR safety training requirements.

OSHA standards include requirements for emergency action and fire prevention plans at facilities. The OSHA standard for process safety management includes requirements for emergency response to hazardous materials incidents at a facility. OSHA also has promulgated a standard for emergency response to hazardous materials incidents at fixed facilities. The OSHA Hazardous Waste Operations and Emergency Response Standard, 29 CFR 1910.120, includes requirements to protect workers in this environment and to help them handle hazardous wastes safely and effectively. The OSHA standard includes specific response procedures, including requirements for protective equipment and training for emergency response personnel.

In carrying out the mandate to prescribe regulations for the safe transportation of hazardous materials, the Secretary of Transportation, through the DOT operating administrations, has developed a special expertise that makes the Department uniquely qualified to play the primary Federal

regulatory role in the protection of workers who operate motor vehicles, trains, aircraft, and vessels used to transport hazardous materials. Further, the preemption provisions in Federal hazmat law provide the agency with the statutory authority to promulgate nationally uniform regulations, thereby assuring that carriers are not forced to comply with a number of different and perhaps inconsistent regulatory requirements applicable to the safety of their employees who transport hazardous materials by air, highway, water, or rail in different state or local jurisdictions. Thus, we believe that the proper role for RSPA in the area of occupational safety is to focus our resources on carrier operations, an area in which we have specialized competence and for which uniform national standards are key to safe and efficient transportation.

Where the functions performed by hazmat employees are intrinsic to the operations of carriers that transport hazardous materials in commerce, the Secretary of Transportation, as well as OSHA, exercises regulatory authority under Federal hazmat law for occupational safety and health issues related to those hazmat employees. One commenter asks for clarification of how OSHA and RSPA will exercise their shared authority concerning worker safety protections for transportation workers. "A driver loading or unloading a cargo tank is subject to the exact same health risks as a warehouse employee performing the same task. It should go without saying that both employees are entitled to the same worker safety protections, and OSHA is the agency to provide those protections. *** [T]he HMR is primarily geared towards the important task of preventing a release of hazardous materials during transportation. *** OSHA, on the other hand, is better able to focus its resources on the safety of workers who, despite the DOT regulations, may nevertheless be exposed to hazardous materials during loading, unloading, and storage. In this respect, OSHA regulates aspects of the work environment that DOT admittedly does not have the resources to regulate itself, including matters such as personal protective equipment, permissible exposure limits, ventilation, hazard communications, and medical surveillance. Employers should not be able to avoid responsibility for protecting their employees through compliance with these and other OSHA requirements, simply because DOT regulates other aspects of hazardous materials transportation." (International Brotherhood of Teamsters)

We agree. As the Mallard Bay decision makes clear, allowing complete preemption of OSHA regulations where another agency has exercised only limited authority over certain working conditions would result in large gaps in worker safety regulations that would be inconsistent with the purpose of the OSH Act. While, as we stated in the NPRM, DOT is uniquely qualified to play the primary Federal regulatory role in the protection of transportation workers, we recognize that OSHA also has a role in the protection of such workers. Therefore, in this final rule, we are modifying the regulatory language proposed in the NPRM to clarify that each facility at which pre-transportation or transportation functions are performed is subject to applicable standards and regulations of other Federal agencies.

As discussed elsewhere in this preamble, OSHA and DOT will continue to share regulatory authority for certain transportation functions. Thus, for loading or unloading operations, the HMR apply to the packaging, including valving, piping, and hoses that are included as part of a DOT specification packaging standard, to filling and closure requirements for a packaging, and to specified operational procedures when loading or unloading is performed by or in the presence of carrier personnel. The OSHA regulations apply to facility equipment, including hoses, piping, and valves that are part of and maintained by the facility, and to operational procedures for a facility at which loading or unloading operations are performed. Persons loading or unloading hazardous materials at a facility may be subject to both HMR and OSHA requirements.

EPA Programs and Regulations. The concurrent applicability of EPA's regulations and the HMR to loading, unloading, and storage of hazardous materials has caused significant confusion. The clarifications we are making in this final rule concern the applicability of the HMR to specific functions and activities. Entities involved with handling and transporting hazardous materials should be aware that a number of EPA requirements might also apply to their operations. Following are descriptions of some EPA programs that apply to facilities that handle and store hazardous materials.

EPCRA (SARA Title II). The Emergency Planning and Community Right-to-Know Act, enacted by Congress in 1986 as Title III of the Superfund Amendments and Reauthorization Act (SARA; 42 U.S.C. 11011 *et seq.*) requires states to establish state and local

emergency planning groups to develop chemical emergency response plans for each community. EPCRA also requires facilities to provide information regarding the hazardous materials they have on site to states, local planners, fire departments and, through them, the public. In addition, EPCRA requires notification of releases of certain hazardous substances. This information forms the foundation of both the community emergency response plans and the public-industry dialogue on risks and risk reduction contemplated by EPCRA. EPCRA emphasizes prevention, preparedness, and response as key factors in reducing the hazards associated with chemical releases.

Pursuant to EPCRA requirements, EPA has issued a list of extremely hazardous substances and threshold planning quantities for each substance. A facility is subject to a one-time emergency planning notification if a substance on the list is present at the facility in an amount in excess of the threshold planning quantity established for the substance. 42 U.S.C. 11002(b)(1).

Among other requirements, facilities where hazardous chemicals, as defined by OSHA, are present must prepare and submit an emergency and hazardous chemical inventory form to the appropriate local emergency planning committee (LEPC), state emergency response commission (SERC), and fire department with jurisdiction over the facility. 42 U.S.C. 11022(a)(1). EPCRA also specifically requires the owner or operator of a facility to promptly provide to an LEPC, on request, information that the LEPC believes is necessary for developing and implementing an emergency plan. 42 U.S.C. 11003(d)(3). Thus, certain hazardous materials that are on site at a facility, in above-threshold quantities, awaiting consumption in the manufacturing process, are regulated under EPCRA.

Except for the release reporting requirements under EPCRA 304, EPCRA does not apply to the transportation in commerce, including storage incidental to that transportation, of any substance or chemical subject to EPCRA. 42 U.S.C. 11047. In its regulations implementing EPCRA, EPA states that a substance is stored "incident to transportation" in commerce if the stored substance is moving under active shipping papers and has not reached the ultimate consignee. 40 CFR 355.40(b)(4)(ii). Consequently, hazardous materials that are stored incident to transportation in commerce, as defined by EPA, are not subject to the requirements of EPCRA. On the other hand, regulated materials that have been delivered to the ultimate

consignee's facility are not stored "incident to transportation" in commerce and are subject to EPCRA requirements.

Although its terminology differs, EPA's definition of "storage incident to transportation" in commerce for purposes of EPCRA is generally the same as the definition we are adopting in this final rule for "storage incidental to movement" of a hazardous material in commerce. For both definitions, a hazardous materials package, freight container, or transport vehicle is stored incident to movement in commerce if it is en route to, but has not yet reached, its consignee. For these situations, most of the EPCRA requirements do not apply. Similarly, EPA agrees with RSPA's longstanding policy, as defined in this final rule, that regulated materials that have been delivered to their consignee are not in transportation in commerce and, thus, are subject to EPCRA requirements.

Based on the definitions in this final rule, hazardous materials in the following non-transportation situations are subject to applicable EPCRA requirements:

(1) Hazardous materials stored at an offeror's facility prior to a carrier taking possession of the hazardous material for movement in transportation in commerce.

(2) Hazardous materials being unloading from a transport vehicle or bulk packaging by a person employed by or under contract to the consignee following delivery, including unloading into a manufacturing process.

(3) Hazardous materials stored at a consignee facility after delivery.

Clean Air Act, § 112(r) (Risk Management Program). Although EPCRA governs emergency response planning, it does not mandate that facilities establish accident prevention programs. The CAA Amendments of 1990, Pub. L. 101-549, 104 Stat. 2399, amended § 112 of the Clean Air Act, 42 U.S.C. 7412, by adding, among other things, a new subsection (r), which includes requirements related to chemical accident prevention. The goal of § 112(r) is to prevent accidental releases of extremely hazardous substances from "stationary sources" and to minimize the consequences of any accidental releases that do occur.

Section 112(r) establishes a general duty for facility owners or operators of stationary sources to identify hazards that may result from accidental releases, design and maintain a safe facility, and minimize the consequences of releases when they occur. Pursuant to § 112(r)(3), EPA has promulgated a list of substances that, in the event of an

accidental release, are known to cause or may be reasonably expected to cause death, injury, or serious adverse effects to human health and the environment. EPA also has established a threshold quantity for each listed chemical. Stationary sources that have more than a threshold quantity of a regulated substance are subject to the accident prevention regulations promulgated by EPA under CAA § 112(r), including the requirement to develop risk management plans.

EPA in its regulations defines "stationary source" as follows:

Stationary source means any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. *The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading.* * * *

40 CFR 68.3. (Emphasis added).

In 1999, EPA clarified its definition of stationary source by stating,

Because a transportation container may at times function as a storage container or a process at a stationary source, or may function as part of operations at a stationary source, EPA is specifically directed by statute to address these activities (CAA section 112(r)(7)(B)(i)) ("The regulations shall cover storage, as well as operations"). To the extent that DOT is also authorized under Federal Hazmat Law to regulate activities that are at a stationary source, nothing in the CAA prohibits both agencies from exercising concurrent jurisdiction over these activities. As EPA has said in the context of the RMP Rule, compliance with Federal Hazmat Law and HMR requirements may satisfy parallel requirements of part 68. This approach to implementation reflects the coordination between the agencies that is called for under CAA section 112(r)(7)(D). The exercise of concurrent jurisdiction preserves the applicability of the Federal Hazmat Law and HMR and does not supersede or limit DOT's jurisdiction.

(64 FR 28696, at 28698; May 26, 1999).

Consistent with prior RSPA interpretations and administrative determinations (as cited previously in this preamble and in the preamble to the NPRM), the provisions in this final rule clarify that, from DOT's perspective, the following situations are neither transportation in commerce nor storage incidental to transportation in commerce:

(1) Hazardous materials stored at an offeror's facility prior to a carrier taking possession of the hazardous material for movement in transportation in commerce.

(2) Hazardous materials being unloaded from a transport vehicle or bulk packaging following delivery to the consignee and after departure of the carrier from the consignee facility, including unloading into a manufacturing process.

(3) Hazardous materials stored at a consignee facility after delivery.

(4) Hazardous materials temporarily stored at a transfer facility for repackaging.

Resource Conservation and Recovery Act (RCRA). RCRA requires EPA to issue regulations to ensure the proper management of hazardous waste from its point of generation to its ultimate disposal—"cradle to grave." The regulations establish a step-by-step approach to monitor and control hazardous wastes at every point in the waste cycle. The regulated community in this system includes those who generate, recycle, transport, treat, store, and dispose of hazardous wastes.

The federal and state jurisdictional issues arising under hazardous waste transportation law can be quite complex. At a threshold level, EPA and DOT have joint statutory responsibilities for developing the regulations that apply to hazardous waste transportation and to the pre-transportation functions that are usually conducted by hazardous waste generators. EPA and DOT are required by law to consult on the development of hazardous waste transportation regulations, and as a result, the two agencies' regulations in this area are inter-related. EPA has incorporated DOT's pre-transportation requirements into its hazardous waste generator regulations (*see* 40 CFR Part 262, Subpart C); *i.e.*, generators that send waste off-site for treatment, storage, or disposal must comply with all applicable requirements of the HMR, including the requirements for packaging, marking, and labeling materials. In addition, generators are required to prepare, and transporters are required to carry, the Uniform Hazardous Waste Manifest for their off-site shipments. The HMR incorporate the Uniform Hazardous Waste Manifest requirements for hazardous waste shipments and permit such a manifest to be used to meet HMR requirements for shipping papers provided it contains all the information required under Subpart C of Part 172 of the HMR.

In the event of a release during transportation, transporters must comply with EPA requirements for

hazardous waste spill cleanup.

Hazardous wastes stored incidental to movement in commerce as that term is defined in this final rule—that is, between the time that a carrier takes possession of the hazardous waste until the hazardous waste is delivered to the destination indicated on the hazardous waste manifest—must be stored in accordance with EPA requirements for hazardous waste storage, including time limits on such storage. Similarly, in the event that a carrier discovers a leaking hazardous materials package and the offeror directs the carrier to dispose of the material, the carrier is subject to all applicable EPA and DOT requirements for transporting, storing, and disposing of the material. The EPA regulations establish a comprehensive set of requirements that include administrative controls and facility standards aimed at controlling the management of hazardous wastes at every point in the waste cycle.

As is typical of many EPA environmental programs, RCRA hazardous waste programs are implemented primarily by authorized state agencies. While the RCRA statute generally allows authorized state programs to include additional or more stringent requirements than those established under EPA's regulations (*see* RCRA § 3009), the authority of RCRA authorized state programs to enact requirements that are more stringent than federal requirements is limited in the area of hazardous waste transportation. This follows from the fact that RCRA § 3003(b) requires that hazardous waste transporter regulations adopted by EPA under RCRA Subtitle C must be consistent with the requirements of the federal hazmat law and the HMR. RCRA state program requirements for hazardous waste transportation must also be consistent with federal hazmat law and regulations issued thereunder, or they may be subject to preemption. Usually, authorized state programs adopt hazardous waste transportation regulations that essentially mimic the federal hazardous waste pre-transportation and transportation regulations adopted by EPA. However, when state program regulations on hazardous waste transportation exceed those developed by EPA, there is at least the potential for these additional state law requirements to raise issues of consistency with hazardous materials law and the HMR, and thus give rise to preemption concerns.

The Federal/state jurisdictional issues that arise under hazardous waste law can become quite complex when RCRA authorized states adopt different or

more stringent hazardous waste program requirements affecting facilities where transportation related activities are conducted. These issues have been raised most prominently in recent years at hazardous waste "transfer facilities." Transfer facilities consist of dedicated, temporary storage facilities that are operated by or for hazardous waste transporter companies. Under EPA standards (*see* 40 CFR 263.12 and § 260.10), hazardous wastes may be stored at transfer facilities without a RCRA permit for up to 10 days in DOT approved packages, as long as the waste shipment remains under an active manifest, and the storage occurs in the normal course of transportation. Typically, such facilities handle transfers of waste containers between vehicles, intermodal transfers, through shipments, and consolidation of wastes in the normal course of transportation.

By their nature, hazardous waste transfer facilities involve hazardous materials activities subject to the HMR (loading, unloading, handling, repackaging, storage incidental to movement), as well as hazardous waste storage and transportation related activities subject to RCRA. Several RCRA authorized states have enacted additional regulatory controls that exceed the minimal requirements specified in EPA's transfer facility regulation. This additional layer of state environmental regulation under RCRA has given rise to issues and litigation surrounding the states' authority to impose additional requirements at transfer facilities, and how these state requirements relate to this Department's jurisdiction over hazardous materials under the hazardous materials laws and the HMR.

The types of additional controls imposed on RCRA transfer facilities by authorized states may run the gamut from licensing requirements similar to those imposed on hazardous waste storage facilities, to facility design and operation criteria that may include berm or curb specifications, secondary containment requirements, floor material specifications for container storage areas, aisle space or setback requirements, waste compatibility standards, container inspection requirements, and requirements for spill prevention or mitigation equipment at loading docks and transfer areas. In addition, states have imposed requirements for personnel training in hazardous waste management, contingency planning, and closure planning and financial assurance requirements to ensure that wastes are properly removed and facilities and sites are properly decontaminated when

hazardous waste operations cease at transfer facilities. (These are just a few examples of state-imposed controls and standards which RCRA authorized states and EPA have identified to us; we do not mean to suggest that this is an exhaustive listing.)

As is the case with OSHA-regulated worker safety requirements, the fact that pre-transportation or transportation functions subject to the HMR are performed at a hazardous waste facility, including a RCRA transfer facility, does not preclude EPA, RCRA authorized state agencies, or local government bodies from also imposing regulatory requirements at that facility. In particular, RCRA authorized state hazardous waste programs may impose facility requirements that exceed the regulatory requirements enacted by EPA, when these additional requirements are aimed at addressing the hazardous waste management aspects of the facility, and are aimed at accomplishing environmental protection objectives such as preventing releases of hazardous wastes to the environment or protecting the environment in the event of a release. Such state environmental regulations are permissible as long as they are not aimed at regulating the transportation or pre-transportation functions that are covered by the HMR, and do not affect the performance of HMR-regulated transportation or pre-transportation functions.

Should a state hazardous waste regulation be found to affect the performance of HMR-regulated functions, it will be evaluated on a case-by-case basis under the preemption criteria of 49 U.S.C. 5125. That is, state law requirements in RCRA authorized programs that differ from federal transportation or pre-transportation requirements will be evaluated to determine if they fail the dual compliance, obstacle, or covered subject tests discussed previously in this preamble section. Thus, for example, RCRA authorized state agencies may not impose packaging standards differing from those included in the HMR; they may not impose manifesting requirements differing from those adopted by EPA and DOT; and they may not prohibit facilities from handling (e.g., consolidating or repackaging) hazardous wastes at transfer facilities or other facilities that are subject to regulation under both RCRA and the HMR. There are, of course, other state law requirements beyond these few examples that could affect the performance of transportation or pre-transportation functions in ways that

would be inconsistent with hazardous materials law and the HMR.

Otherwise, facilities that perform both hazardous waste management functions and transportation/pre-transportation functions must ensure that the functions subject to the HMR are performed in accordance with the HMR, and must also assure compliance with applicable EPA or State law requirements addressing the environmental concerns associated with the hazardous waste management functions at the facilities. Thus, in the example of a RCRA transfer facility, preparation of hazardous waste packages for shipment must be performed in accordance with the HMR. The facility must also comply with the RCRA authorized states' environmental regulations addressing the facility's hazardous waste storage functions, such as berm and floor design requirements, secondary containment requirements, aisle space and container inspection requirements, personnel training requirements, and the like. There is a broad scope to the possible environmental protection requirements that might be imposed under state law and not pose any significant jurisdictional issue under the hazardous materials laws and the HMR.

Spill Prevention, Control, and Countermeasure (SPCC) Program. The Clean Water Act (33 U.S.C. 1251 *et seq.*) establishes authority for the Spill Prevention, Control, and Countermeasure (SPCC) program for non-transportation-related facilities. The SPCC regulations are designed to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or onto the navigable waters of the United States or adjoining shorelines. A 1971 Memorandum of Understanding (MOU) between EPA and DOT establishes definitions of transportation-related and non-transportation-related facilities for purposes of the FWPCA. Under the MOU, SPCC regulations apply to the following non-transportation-related facilities: (1) Oil storage facilities, including all related equipment and appurtenances and bulk plant storage; (2) terminal oil storage; (3) pumps and drainage systems used in the storage of oil, except for in-line or breakout tanks needed for the continuous operation of a pipeline system; and (4) any terminal facility, unit, or process integrally associated with the transfer of oil in bulk to or from a vessel. Loading racks, transfer hoses, loading arms, and other equipment that is appurtenant to a non-transportation-related facility or terminal and that is used to transfer oil in bulk to or from highway vehicles or rail cars are also subject to regulation

under the SPCC program. The SPCC regulations include several requirements for facility rail tank car and cargo tank motor vehicle loading and unloading racks, such as a secondary containment system and lights or barriers to prevent the vehicle from departing the facility prior to disconnecting transfer lines.

ATF Programs and Regulations. As explained above, ATF regulations at 27 CFR part 555 address the import, manufacture, distribution, and storage of explosives. The regulations are promulgated under Chapter 40 of Title XI of the Organized Crime Control Act of 1970. Section 845(a) of Chapter 40 states that most provisions of Chapter 40 shall not apply to:

any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety.

Accordingly, when explosives fall within this exception, they are not governed by the ATF regulatory requirements set forth above. Thus, explosives that are stored incidental to movement, as that term is defined in this final rule, are not subject to ATF requirements, but instead are subject to HMR requirements applicable to such storage. However, § 845(a) does not apply in situations where facility personnel perform pre-transportation functions with respect to preparing explosives for transportation. Thus, as is the case with certain OSHA and EPA regulations, a facility at which pre-transportation functions are performed may also be subject to ATF regulations applicable to operations at that facility.

The HMR do not contain storage and theft/loss reporting requirements that directly correspond to the ATF regulations. The HMR require hazardous materials stored incidental to movement to meet all the applicable shipping paper, emergency response information, hazard communication, packaging, and operational requirements that apply when shipments are actually moving in transportation. In addition, the Federal Motor Carrier Safety Regulations impose requirements on motor vehicles that include requirements for storage incidental to movement. For example, a motor vehicle that contains Division 1.1, 1.2, or 1.3 explosives must be attended at all times, including during incidental storage, unless the motor vehicle is located on the motor carrier's property, the shipper or consignee's property, or at a safe haven. In addition, a motor vehicle containing a Division 1.1, 1.2, or 1.3 explosive may not be parked on or within 5 feet of the traveled portion of

a public highway or street; on private property without the consent of the person in charge of the property; or within 300 feet of a bridge, tunnel, dwelling, or place where people work or congregate unless for brief periods when parking in such locations is unavoidable. ATF has expressed some concern that explosives stored incidental to their movement in transportation and, thus, falling within the § 845(a) exception, may present potential safety and security risks. For example, ATF suggests that such explosives could be stored close to non-related residential and commercial structures, as well as to highways and roadways that are commonly traveled by the general public. ATF is concerned that unsafe amounts of explosives could be stored in one location and may not be adequately secured. Because the HMR do not contain a restriction on the amount of time explosives may be stored incidental to movement, ATF sees these regulatory deficiencies as especially problematic. Moreover, the fact that explosives lost or stolen while in transit do not have to be promptly reported as lost or stolen could hinder law enforcement in preventing harm and gathering intelligence.

We recognize there is a need to evaluate and address these issues in the regulation of explosives stored incidental to movement. However, this final rule is not the appropriate vehicle for imposing safety and security requirements on explosives stored incidental to movement. This final rule addresses specific situations, activities, and operations to which the HMR apply, not what the safety and security standards should be when the HMR do apply. In order to enhance the safety and security of hazardous materials, including explosives, stored incidental to transportation, we intend to propose additional requirements for hazardous materials stored incidental to transportation. We intend to consider industry and government standards, including the ATF regulations in part 555, for guidance in formulating our proposals with respect to explosives.

Finally, ATF also has concerns about "safe havens." The FMCSRs permit explosives to be stored for an indefinite period in a "safe haven." ATF has found that safe havens have been located next to major highways and used for extended periods to store explosives. Because the issue of safe havens is addressed in the advance notice of proposed rulemaking issued jointly by RSPA and FMCSA under docket HM-232A on July 16, 2002 (67 FR 46622), we will not address it in this final rule.

However, we will address these concerns in the near future.

IV. Revisions to § 174.67

On September 14, 1992, we published an NPRM under Docket HM-212 (57 FR 42466), proposing several changes to the HMR as they apply to loading and unloading of hazardous materials from rail tank cars and cargo tanks. We proposed to amend the following sections of the HMR:

- Section 174.67(i) pertaining to unloading of tank cars and § 177.834(i) pertaining to the loading of cargo tanks to provide for the use of signaling systems to meet attendance requirements.
- Sections 174.67(i) and 174.67(j) to allow a tank car containing hazardous materials, under certain conditions, to remain standing with the unloading connections attached when no hazardous material is being transferred.
- Section 177.834 to remove a requirement that an attendant must be within 25 feet of the cargo tank motor vehicle during loading operations that are monitored by a signaling system.

Our goals were to provide tank car and cargo tank operators the flexibility to design loading and unloading procedures appropriate to specific facilities and circumstances, to accommodate new technologies in the current regulatory scheme, and to incorporate certain exemptions into regulations of general applicability. We received about forty (40) comments in response to the NPRM from manufacturers, distributors, shippers, carriers, and industry associations. Overall, commenters supported the proposed rule, stating that it provides flexibility and economic relief to industry with no diminution in safety.

The HM-223 NPRM proposed to delete the rail tank car unloading requirements in § 174.67, except for certain provisions related to protection of train and engine crews, because changes in the way rail tank cars are unloaded made the § 174.67 requirements obsolete. As discussed above, however, we have reconsidered the proposal in light of comments suggesting the transloading operations should be regulated under the HMR. Therefore, in this final rule, we are adopting certain changes to § 174.67 to update and clarify requirements and to incorporate the provisions of certain exemptions into the HMR. This final rule specifies that the requirements in § 174.67 apply to transloading operations. As discussed above, actions that assure that a tank car that is being loaded or unloaded does not inadvertently enter transportation or

endanger transportation personnel (i.e., posting warning signs, setting brakes, blocking wheels) are regulated under the HMR. Unloading of rail tank cars by consignees after delivery by the carrier is not regulated under the HMR, except as described in this paragraph. As stated previously in this preamble, unloading of rail cars at a facility after delivery by and departure of the rail carrier is subject to OSHA regulations applicable to worker protection and safety.

This final rule incorporates revisions to § 174.67 applicable to: (1) Securing tank cars during unloading to prevent movement of the tank cars and entry to the unloading area by other rail equipment; (2) written safety procedures; (3) monitoring of tank car unloading; and (4) permitting tank cars to remain standing with unloading connections attached. Except for those applicable to monitoring of tank car unloading, the revisions proposed in this interim final rule are currently authorized under over 80 exemptions granted to operators of tank car unloading facilities.

The revisions to the tank car unloading monitoring requirements incorporate procedures that are currently permitted by interpretation. The HM-212 NPRM included a proposal to permit monitoring of tank car unloading by use of a signaling system that includes surveillance equipment (television monitors and video cameras) and remote shut-off equipment. A number of commenters suggested that the proposal should be expanded to authorize systems other than television or video surveillance equipment, noting that sensors coupled with alarms can be as effective as visual surveillance in detecting unintentional releases. Indeed, in the case of a hazardous material that exists as a gas under ambient conditions, a sensor is more effective than visual surveillance. After further consideration of general industry practices, we determined that a signaling system need not be equipped with television monitors and video cameras to effectively meet the attendance requirements as was proposed in the NPRM. Other types of signaling systems are also acceptable. This final rule reflects this change and is consistent with letters of clarification issued over the past several years applicable to monitoring of tank car unloading.

This final rule revises § 174.67 as follows:

1. Paragraph (a)(2) incorporates provisions, currently required under exemptions, relevant to blocking the wheels of tank cars during unloading.

2. Paragraph (a)(3) incorporates provisions, currently required under exemptions, relevant to securing access to the track where unloading operations are conducted. This paragraph requires facilities to use derails, lined and blocked switches, portable bumper blocks, or other equipment to prevent access by other rail equipment, including motorized service vehicles.

3. Paragraph (a)(4) modifies the provisions in current paragraph (a)(3) to permit operators some flexibility in the wording used on caution signs.

4. Paragraph (a)(5) incorporates provisions, currently required under exemptions, relevant to written safety procedures. This paragraph requires operators to maintain written safety procedures, such as those that meet the requirements of OSHA regulations in 29 CFR 1910.119 and 120, that are immediately available in the event of an emergency. However, this provision is not intended to preempt the process safety management, hazardous waste operations and emergency response, or any other OSHA standards.

5. Paragraph (j) incorporates provisions currently permitted by interpretation relevant to monitoring of unloading operations. To eliminate confusion in wording noted by commenters, paragraph (i) is modified in this final rule to clarify that the attendance requirement may be met either by physical on-site attendance providing an unobstructed view of the tank car unloading operation as currently authorized under the HMR or by a signaling system, including video systems, sensors, or mechanical equipment, that provides a level of observation equivalent to on-site attendance.

6. Paragraph (j) is revised to specify that attendance is not required when piping is attached to a top discharge outlet of a tank car equipped with a protective housing specified in § 179.100–12 provided that all valves on the tank car are tightly closed, the piping is not connected to a hose or other unloading equipment, and the piping extends no more than 15.24 centimeters (6 inches) from the outer edge of the protective housing within which the discharge outlet is enclosed. This provision eliminates the need for an operator to disconnect piping when the unloading operation is interrupted or temporarily discontinued, thereby reducing wear on the unloading service equipment.

7. Current paragraph (k) is redesignated paragraph (l). New paragraph (k) incorporates provisions, currently required under exemptions, relevant to tank cars left standing with

unloading connections attached while no product is being transferred. Paragraph (k) requires the facility operator to designate an employee responsible for on-site monitoring of the transfer facility who is familiar with the properties of the products contained in the tank cars and procedures to be followed in the event of an emergency. The designated employee must have the ability and the authority to take responsible actions in the event of an emergency.

V. Section-by-Section Review

General

In § 171.8, we define a new term, “movement,” to mean “the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel.” Accordingly, we are replacing the term “movement” when it appears in the HMR in a context where the new definition would be inappropriate. These changes are in §§ 173.3(c)(2); 173.6(b)(1) and (b)(3); 173.24a(a)(3); 173.62(c) in the table under Packing Instruction 131 each time it appears; 173.166(e)(4)(iii); 173.171 (d); 173.181(a)(2); 173.185(e)(7), (g)(1), and (g)(2); 173.189(b) and (d)(4)(i); 173.219(b)(3); 173.308(a)(4); 173.335(c); 173.416(f); 174.110; 174.112(b) and (c)(3); 174.115(a) and (b)(3); 175.81(a); 176.69(d); 176.76(a)(2) each time it appears; 176.78(f)(8); 176.93(a)(1); 176.116(d); 176.132(c); 176.168(g); 176.200(b) and (c) each time it appears; 177.834(a); 177.840(b)(3); 177.870(e); 178.601(g)(1)(i)(D), (g)(1)(ii), and (g)(4)(v); and 178.704(d)(3).

Part 171

Section 171.1. In this final rule, we are retitling this section “Applicability of HMR to persons and functions.” We are adding introductory text to this section to explain the authority provided to the Secretary of Transportation under Federal hazmat law to establish regulations for the safe transportation of hazardous materials in commerce; the Secretary’s delegation of this authority to RSPA; and the applicability of this section to packagings represented as qualified for use in the transportation of hazardous materials in commerce and to pre-transportation and transportation functions.

In paragraph (a) of this section, we specify that the HMR apply to each person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in

the transportation of hazardous materials in commerce, including each person who performs these activities under contract to an agency or branch of the Federal government. Paragraph (a) restates requirements in current paragraphs (a)(3) and (b) of § 171.1.

Paragraph (b) of this section specifies that the HMR apply to pre-transportation functions performed by persons who offer hazardous materials for transportation in commerce or cause hazardous materials to be transported in commerce, including persons who perform pre-transportation functions under contract to an agency or branch of the Federal government. Paragraph (b) includes a non-exhaustive list of pre-transportation functions to which the HMR apply.

Paragraph (c) of this section states that the HMR apply to transportation of hazardous materials in commerce and to persons who transport hazardous materials in commerce, including persons who transport hazardous materials in commerce under contract to an agency or branch of the Federal government. Paragraph (c) also defines the points at which transportation in commerce begins and ends and lists transportation functions included in the term “transportation in commerce”—movement of a hazardous material in commerce, loading incidental to movement of a hazardous material in commerce, unloading incidental to movement of a hazardous material in commerce, and storage incidental to movement of a hazardous material in commerce. In this final rule, the definitions have been revised from those proposed in the NPRM to reflect commenters’ concerns and suggestions.

Paragraph (d) lists specific functions that are not subject to the HMR.

Paragraph (e) states that facilities at which pre-transportation or transportation functions are performed in accordance with the HMR may also be subject to applicable standards and regulations of other Federal agencies.

Paragraph (f) states that facilities at which pre-transportation or transportation functions are performed in accordance with the HMR may also be subject to applicable laws and regulations of state and local governments, except to the extent that such laws and regulations are preempted by Federal hazmat law. Paragraph (f) also sets forth the criteria established in Federal hazmat law for making preemption determinations and notes that preemption procedures are in Subpart C of 49 CFR Part 107.

Paragraph (g) restates the penalties for noncompliance with the HMR that are currently in paragraph (c) of § 171.1.

The maximum criminal fines under Title 18 of the United States Code are \$250,000 for an individual and \$500,000 for a corporation.

Section 171.2. We are revising this section to clarify those persons and activities that are subject to the requirements of the HMR. Generally, the revisions adopted in this section restate more clearly the current requirements and prohibitions.

Paragraph (a) states that a person who performs a function that is required by the HMR must perform the function in accordance with the HMR.

Paragraph (b) requires a person who offers hazardous materials for transportation in commerce to comply with the HMR or with an exemption, approval, or registration issued in accordance with the HMR.

Paragraph (c) requires each person who performs a function covered by or having an effect on the packaging specifications in parts 178, 179, or 180 of the HMR or an exemption or approval to perform the function in accordance with the specification, exemption, or approval.

Paragraph (d) prohibits any person subject to the registration requirements in subpart G of Part 107 from offering or accepting a hazardous material for transportation in commerce or from transporting a hazardous material in commerce unless that person is registered.

Paragraph (e) prohibits any person from offering or accepting a hazardous material for transportation in commerce unless the hazardous material is prepared for shipment as required by the HMR or an applicable exemption, approval, or registration.

Paragraph (f) prohibits any person from transporting a hazardous material in commerce except in conformance with the HMR or an applicable exemption, approval, or registration.

Paragraph (g) restates requirements in current paragraph (c) of § 171.2.

Paragraph (g) prohibits any person from representing, marking, certifying, selling, or offering a packaging as meeting the requirements of the HMR unless the packaging is manufactured, fabricated, marked, maintained, reconditioned, repaired, and retested in accordance with the applicable HMR requirements. Paragraph (g) applies the same prohibition to any person who performs these functions under the terms of an exemption, approval, or registration. This paragraph also requires a packaging marked as meeting a DOT specification or UN standard to conform to the specification or standard at all times that the marking is visible. The requirements of paragraph (g), like

the current requirements in § 171.2(a), apply whether or not the packaging is used for the transportation in commerce of a hazardous material.

Paragraph (h) restates the requirements in current paragraph (d) of § 171.2. This paragraph lists the representations, markings, and certifications subject to the prohibitions of paragraph (g) of this section.

Paragraph (i) prohibits any person from certifying that a hazardous material is offered for transportation in commerce in accordance with the HMR unless the hazardous material has been prepared for shipment as required or authorized by the HMR or an exemption, approval, or registration. This paragraph requires persons who offer a hazardous materials package for transportation under the HMR to assure that the package remains in condition for shipment until it is in the possession of the transporting carrier.

Paragraph (j) prohibits any person from marking or representing that a packaging for transporting a hazardous material in commerce is safe, certified, or in compliance with the HMR unless it meets all applicable regulatory requirements issued under Federal hazmat law. This paragraph restates a prohibition in current paragraph (f)(1) of § 171.2.

Paragraph (k) prohibits any person from marking or representing that a hazardous material is present in a package or transportation conveyance if the hazardous material is not, in fact, present. This paragraph restates a prohibition in current paragraph (f)(2) of § 171.2.

Paragraph (l) prohibits any person from unlawfully tampering with any marking, label, placard, or description on a document that is required by Federal hazmat law or a regulation issued under Federal hazmat law. This paragraph also prohibits any person from unlawfully tampering with a package or transportation conveyance used to transport hazardous materials. This paragraph restates a prohibition in current paragraphs (g)(1) and (g)(2) of § 171.2.

Paragraph (m) prohibits any person from falsifying or altering an exemption, approval, registration, or other grant of authority relevant to the transportation of hazardous materials issued by RSPA. This paragraph further prohibits any person from offering a hazardous material for transportation under an exemption, approval, registration, or other grant of authority that has been altered without the consent of RSPA. Finally, this paragraph prohibits any person from representing, marking, certifying, or selling a packaging under

an exemption, approval, registration, or other grant of authority that has been altered without the consent of RSPA.

Section 171.8. We are revising definitions for the terms “carrier,” “person,” and “private track and siding.” We are adding definitions for the following terms: “Administrator,” “Associate Administrator,” “commerce,” “consignee,” “hazmat,” “HMR,” “loading incidental to movement,” “movement,” “pre-transportation function,” “Secretary,” “storage incidental to movement,” “transloading,” “transportation or transport,” “transportation facility,” and “unloading incidental to movement.” We are deleting the definition for the term “sheathing” because it is confusing and not necessary to an understanding of the HMR.

Part 173

Section 173.1. We are removing paragraph (c) and redesignating current paragraph (d) as paragraph (c). Current paragraph (c) is redundant with the revisions to §§ 171.1 and 171.2.

Section 173.10. The NPRM proposed removing the requirements in this section. A number of commenters oppose the deletion. Upon consideration of the comments and consultation with FRA, we agree that the section should not be removed.

Section 173.30. In the NPRM, we proposed to remove this section because it conflicts with the new definitions of “loading incidental to movement” and “unloading incidental to movement” proposed in §§ 171.1 and 171.8. Upon further consideration, we have decided to retain this section with modifications to clarify that persons who are subject to the loading and unloading requirements of the HMR must comply with all applicable loading and unloading regulations.

Section 173.31. We are adding new paragraph (g) to consolidate requirements related to the protection of train and engine crews during rail tank car loading and unloading operations.

Part 174

We are revising § 174.67 as discussed earlier in this preamble to incorporate revisions to rail tank car unloading requirements to incorporate certain exemptions provisions and clarify and update the requirements.

VI. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under Executive Order 12866 and the

Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because of significant public interest. A regulatory evaluation is available for review in the public docket for this rulemaking.

For the most part, the provisions of this final rule maintain the status quo for applicability of the HMR and, thus, neither increase nor decrease the costs of compliance with the HMR for persons who offer hazardous materials for transportation or transport hazardous materials in commerce. The only change from the status quo concerns rail tank car unloading operations. This final rule excludes consignee unloading of rail cars from regulation under the HMR, thereby reducing the costs of compliance with the HMR for rail tank car unloading facilities. In addition, this final rule expands application of current requirements for placing warning signs, setting brakes, and blocking wheels during rail tank car unloading operations to loading operations, as well. Rail facilities currently utilize these protective measures as part of their standard safe operating procedures and, thus, should incur minimal increased costs as a result of this proposal.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts state law and will have substantial direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the consultation requirements of Executive Order 13132 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 final rule addresses covered subject item(s) 1–5 above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary because there appears to be confusion in the regulated community and among Federal, state, and local agencies with hazardous materials safety responsibilities concerning whether and to what extent the HMR apply to particular operations and activities related to the transportation of hazardous materials in commerce. The most obvious area of confusion was identified in the 1996 and 1999 ANPRMs issued for this docket—which loading, unloading, and storage activities are incidental to the movement of hazardous materials in commerce and therefore subject to the HMR. In addition, there is uncertainty concerning the extent to which other Federal, state, and local agencies may regulate hazardous materials safety, particularly at fixed facilities where the lines between pre-transportation, transportation, and non-transportation operations are not clearly articulated.

Federal hazardous materials transportation law provides at § 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. The effective date of Federal preemption will be 90 days from publication of a final rule in this matter in the **Federal Register**.

As required under Executive Order 13132, we consulted with state and local officials early in the process of developing a proposed regulation in this matter. Through letters dated November 2, 1999, we invited the following organizations to participate in a meeting to discuss the HM–223 rulemaking: National Governors' Association; Council of State Governments; National Conference of State Legislatures; U.S. Conference of Mayors; the National Association of Counties; the National Association of Towns and Townships; and the National League of Cities. We met with representatives of the National Governors' Association, the Council of State Governments, and the National Conference of State Legislatures on

January 20, 2000. During the meeting, we provided a brief summary of the status of the rulemaking. In addition, we explained the preemption provisions of Federal hazmat law and how this rulemaking could affect state and local government programs governing hazardous materials safety. The state and local government representatives asked several questions about time frames and procedures for the rulemaking and expressed general support for the rulemaking goals as expressed in the two ANPRMs. The state and local government representatives did not comment on the issues and options discussed in the two ANPRMs and expressed a preference to wait to submit comments until we publish a specific proposal in an NPRM. We encouraged the state and local representatives to submit written comments in advance of publication of the NPRM to assure that the rulemaking addresses their concerns. After the meeting, we sent letters to all of the invited organizations, summarizing the meeting and again encouraging them to submit written comments to the HM–223 docket in advance of publication of the NPRM. None chose to do so.

In addition, following publication of the NPRM, we wrote to the above-listed organizations to provide them with a copy of the NPRM. We encouraged the organizations to submit comments on the NPRM and invited them to meet with us to discuss the specifics of the proposals in the NPRM. None of the organizations requested a meeting nor did they submit comments.

RSPA made all written communications submitted in this proceeding by state and local officials available to the Director of the Office of Information and Regulatory Affairs, Office of Management and Budget.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply. Nevertheless, through a letter dated November 2, 1999, we invited the National Congress of American Indians (NCAI) to participate in a meeting to discuss this rulemaking. The NCAI did not attend the meeting, which occurred on January 20, 2000. After the meeting, we sent a letter to the NCAI, summarizing the meeting and encouraging the

organization to submit written comments to the docket in advance of publication of this NPRM. The NCAI chose not to do so.

In addition, following publication of the NPRM, we wrote to the NCAI to provide a copy of the NPRM. We encouraged NCAI to submit comments on the NPRM and invited its representatives to meet with us to discuss the specifics of the proposals in the NPRM. NCAI did not request a meeting or submit comments.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

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. We have determined that the requirements in this final rule will not have a significant impact on a substantial number of small entities.

Need for the proposed rule. Federal hazardous materials transportation law (Federal hazmat law), codified at 49 U.S.C. 5101 *et seq.*, authorizes the Secretary of Transportation to establish regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. The regulations apply to persons who: (1) Transport hazardous materials in commerce; (2) cause hazardous materials to be transported in commerce; or (3) manufacture, mark, maintain, recondition, repair, or test packagings or containers (or components thereof) that are represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce. The regulations may govern any safety aspect of hazardous materials transportation the Secretary considers appropriate. The law defines "transportation" to mean "the movement of property and loading, unloading, or storage incidental to the movement," but does not define with specificity the particular activities that fall within the term "loading, unloading, or storage incidental to movement."

We have issued a number of interpretations, inconsistency rulings, and preemption determinations in response to requests from the public for clarification regarding the meaning of "transportation in commerce" and whether particular activities are covered by that term and, therefore, are subject to regulation under the HMR. Loading, unloading, and storage of hazardous

materials are areas of particular confusion and concern. In addition, there is uncertainty concerning the extent to which other Federal, state, and local agencies may regulate hazardous materials safety, especially at fixed facilities. Although the interpretations and administrative determinations we have issued are publicly available, the regulated industry, Federal agencies, state and local governments, and Indian tribes have not been consistently aware of their existence and availability. Further, some of the interpretations and decisions we have issued need to be revised in light of changes in the Secretary of Transportation's and other Federal agencies' statutory authority. Thus, we have initiated a rulemaking to consolidate, clarify, and revise, as necessary, these interpretations and administrative decisions and make them part of the HMR.

Description of Proposed Actions. The final rule clarifies the applicability of the HMR by focusing on a carrier's possession of hazardous materials for the purpose of transporting them in commerce. Thus, the HMR would apply to the following functions:

1. *Packaging functions.* All functions related to the design, manufacture, maintenance, and use of packagings authorized for the transportation of hazardous materials in commerce. These functions include testing, retesting, and reconditioning functions designed to assure the integrity of authorized packagings.

2. *Pre-transportation functions.* All functions performed in advance of transportation in commerce to prepare a shipment of hazardous materials for transportation. These functions affect the safety of hazardous materials shipments during transportation and include:

- Determining the hazard class of a hazardous material;
- Selecting a hazardous materials packaging;
- Placing warning signs, blocking wheels, and setting brakes on tank cars placed for loading or unloading with closures open;
- Filling a hazardous materials packaging;
- Securing a closure on a filled hazardous materials package or container;
- Marking a package to indicate that it contains a hazardous material;
- Labeling a package to indicate that it contains a hazardous material;
- Preparing a hazardous materials shipping paper;
- Providing and maintaining hazardous materials emergency response information;

- Reviewing a hazardous materials shipping paper to verify compliance with the HMR or international equivalents;
- For persons importing a hazardous material into the United States, providing the shipper with information as to the requirements of the HMR that apply to the shipment of the material while in the United States;
- Certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR;
- Blocking and bracing a hazardous materials package in a freight container or transport vehicle;
- Segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo; and
- Selecting, providing, or affixing placards for a freight container or transport vehicle to indicate that it is carrying hazardous materials.

3. *Transportation functions.*

Functions performed as part of the movement of hazardous materials in commerce. These functions include:

- Loading incidental to movement (*i.e.*, loading of non-bulk packages, portable tanks, or IBCs into freight containers or transport vehicles by carrier personnel; loading of cargo tank motor vehicles by carrier personnel; loading of rail tank cars by carrier personnel);
- Unloading incidental to movement (*i.e.*, unloading of non-bulk packages, portable tanks, or IBCs from freight containers or transport vehicles by carrier personnel; unloading of cargo tank motor vehicles by carrier personnel; unloading of rail tank cars by carrier personnel); and
- Storage incidental to movement (*i.e.*, storage of a hazardous materials package between the time the package leaves the shipper's premises and the time it arrives at the consignee's facility; storage of rail tank cars on track leased from carrier by consignee).

Generally, the clarifications outlined above are consistent with current regulatory requirements and previously issued administrative decisions and interpretations concerning the applicability of the HMR and maintain the current status quo. However, for rail transportation, the clarifications included in the final rule represent a change from current practice and interpretation. Because tank car unloading by consignees is generally part of a manufacturing or distribution process and, as such, is inappropriate

for regulation as a transportation function under the HMR, in this final rule, we state that the unloading of a tank car by a consignee within its facility is not subject to the HMR. This approach is consistent with RSPA's current regulation of cargo tank unloading and takes into account the changes in industry rail tank car unloading practices since the regulations in Part 174 were promulgated. Transloading operations—that is, the transfer of a hazardous material at an intermodal facility directly from a rail tank car to a cargo tank motor vehicle for the purpose of continuing the movement of the hazardous material in commerce—would continue to be regulated under the HMR, as such operations currently are regulated.

FRA believes that unique features of rail tank car loading and unloading facilities and of rail tank cars themselves require continued application of certain HMR requirements related to the protection of train and engine crews operating within a shipper or consignee facility. FRA wants to assure that, at the point of physical interface between the general system of rail transportation and the facility rail system, rail crews do not make inappropriate assumptions about the status of a particular rail car or series of rail cars and attempt to move cars that are attached to facility storage tanks or manufacturing processes, thereby endangering rail crew safety or adversely affecting movement along the general system of rail transportation. Therefore, in this final rule, we retain current requirements for posting warning signs, setting hand brakes, and blocking the wheels of hazardous materials tank cars placed for unloading with closures open. We further require application of these protective measures whenever a tank car is placed for loading with a closure open. The risk to the general system of rail transportation and to rail crews operating within a facility is the same whether a hazardous materials tank car is placed for either loading or unloading with a closure open.

In this final rule, we have rewritten the regulations applicable to rail transloading operations in § 174.67 of the HMR. The final rule permits facilities to use signaling systems to monitor operations and incorporates certain exemptions provisions authorizing tank cars to stand with unloading connections attached during intermittent operations. Eliminating the need for exemptions and permitting facilities flexibility in monitoring operations will significantly reduce

operating costs for these facilities and will result in a reduction in administrative costs for the Federal government.

Identification of potentially affected small entities. For the most part, the selected alternative maintains the status quo in terms of applicability of the HMR, thus imposing no new compliance costs on the regulated industry. For rail tank car unloading facilities, the final rule reduces the costs of compliance with the HMR by eliminating the current requirement that rail tank car consignees comply with unloading requirements in § 174.67. For facilities at which rail tank cars are loaded with hazardous materials, because operators are currently posting warning signs, setting hand brakes, and blocking wheels of rail cars placed for loading as part of their standard operating procedures, the selected alternative imposes no costs of compliance related to preventing access to the tank car during loading.

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of “small business” has the same meaning as under the Small Business Act. Therefore, since no such special definition has been established, RSPA employs the thresholds published by SBA for industries subject to the HMR. Based on data for 1997 compiled by the U.S. Census Bureau, it appears that upwards of 95 percent of firms who are subject to the HMR are small businesses. These entities will incur no new costs to comply with the HMR under this final rule.

The Federal Railroad Administration estimates that there are 2,500 rail tank car loading and unloading facilities operated by manufacturers of chemicals and allied products. Since no special definition has been established, we employ the threshold of 500–1,000 employees published by SBA for manufacturers of chemicals and allied products (NAICS Subsector 325). Based on data for 1997 compiled by the U.S. Census Bureau, it appears that 93 percent of these firms are small businesses. The provisions in this final rule will not increase the costs of complying with HMR requirements related to preventing access to rail tank cars during loading operations and will reduce the cost of complying with the HMR unloading requirements.

Related Federal rules and regulations. OSHA issues regulations related to safe operations, including containment and transfer operations, involving hazardous materials in the workplace. These regulations are codified at 29 CFR Part

1910 and include requirements for process safety management of highly hazardous chemicals and for operations involving specific hazardous materials, such as compressed gases, flammable and combustible liquids, explosives and blasting agents, liquefied petroleum gases, and anhydrous ammonia. OSHA regulations also address hazard communication requirements at fixed facilities, including container labeling and other forms of warning, material safety data sheets, and employee training.

EPA issues regulations designed to prevent accidental releases into the environment of hazardous materials at fixed facilities, codified at 40 CFR Part 68. These regulations include requirements for risk management plans that must include a hazard assessment, a program for preventing accidental releases, and an emergency response program to mitigate the consequences of accidental releases. In addition, EPA regulations applicable to hazardous materials at fixed facilities address community right-to-know requirements; hazardous waste generation, transportation, storage, disposal, and treatment; and requirements to prevent the discharge of oil into or onto the navigable waters of the United States or adjoining shorelines.

Conclusion. We have determined that this final rule will impose no new costs of compliance with HMR requirements. This final rule will reduce the overall costs of compliance for companies that operate rail tank car unloading facilities. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small businesses.

This final rule has been developed in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Paperwork Reduction Act

This final rule does not impose any new information collection requirements.

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 final rule 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 final rule. An environmental assessment has been placed in the public docket for this rulemaking.

I. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, 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 are amending 49 CFR Parts 171, 173, 174, 175, 176, 177, and 178 as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. Section 171.1 is revised to read as follows:

§ 171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

Federal hazardous material transportation law (49 U.S.C. 5101 *et seq.*) directs the Secretary of Transportation to establish regulations for the safe transportation of hazardous materials in commerce, as the Secretary considers appropriate. The Secretary is authorized to apply these regulations to persons who transport hazardous materials in commerce. In addition, the law authorizes the Secretary to apply these regulations to persons who perform pre-transportation functions that relate to assuring the safe transportation of hazardous materials in commerce, specifically persons who offer for transportation or otherwise cause hazardous materials to be transported in commerce. The law also authorizes the Secretary to apply these regulations to persons who manufacture or maintain packagings or components of packagings that are represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce. Federal hazardous material transportation law also applies to anyone who indicates by marking or other means that a hazardous material is present in a package or transport conveyance when it is not, and to anyone who tampers with a package or transport conveyance used to transport hazardous materials or a required marking, label, placard, or shipping description. In 49 CFR 1.53, the Secretary delegated authority to issue regulations to the Research and Special Programs Administrator. The Administrator issues the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 180) under that delegated authority. This section addresses the applicability of the HMR to packagings represented as qualified for use in the transportation of hazardous materials in commerce and to pre-transportation and transportation functions.

(a) *Packagings.* Requirements in the HMR apply to each person who

manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce, including each person under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce.

(b) Pre-transportation functions.

Requirements in the HMR apply to each person who offers a hazardous material for transportation in commerce, causes a hazardous material to be transported in commerce, or transports a hazardous material in commerce and who performs or is responsible for performing a pre-transportation function, including each person performing pre-transportation functions under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government. Pre-transportation functions include, but are not limited to, the following:

(1) Determining the hazard class of a hazardous material.

(2) Selecting a hazardous materials packaging.

(3) Filling a hazardous materials packaging, including a bulk packaging.

(4) Transloading a hazardous material at an intermodal transfer facility from one bulk packaging to another bulk packaging for purposes of continuing the movement of the hazardous material in commerce.

(5) Securing a closure on a filled or partially filled hazardous materials package or container or on a package or container containing a residue of a hazardous material.

(6) Marking a package to indicate that it contains a hazardous material.

(7) Labeling a package to indicate that it contains a hazardous material.

(8) Preparing a shipping paper.

(9) Providing and maintaining emergency response information.

(10) Reviewing a shipping paper to verify compliance with the HMR or international equivalents.

(11) For each person importing a hazardous material into the United States, providing the shipper with timely and complete information as to the HMR requirements that will apply to the transportation of the material within the United States.

(12) Certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR.

(13) Loading, blocking, and bracing a hazardous materials package in a freight container or transport vehicle.

(14) Segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo.

(15) Selecting, providing, or affixing placards for a freight container or transport vehicle to indicate that it contains a hazardous material.

(c) *Transportation functions.*

Requirements in the HMR apply to transportation of a hazardous material in commerce and to each person who transports a hazardous material in commerce, including each person under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government who transports a hazardous material in commerce.

Transportation in commerce begins when a carrier takes possession of a hazardous material for the purpose of transporting it and continues until the package containing the hazardous material arrives at the destination indicated on a shipping document, package marking, or other medium, or, in the case of a rail car, until the car arrives at a private track or siding. For a private motor carrier, transportation in commerce begins when a motor vehicle driver takes possession of a hazardous material for the purpose of transporting it and continues until the driver relinquishes possession of the package containing the hazardous material at its destination and is no longer responsible for performing functions subject to the HMR with respect to that particular package. Transportation in commerce includes the following:

(1) *Movement.* Movement of a hazardous material by rail car, aircraft, motor vehicle, or vessel (except as delegated at § 1.46(t) of this title).

(2) *Loading incidental to movement of a hazardous material.* Loading of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel for the purpose of transporting it, including blocking and bracing a hazardous materials package in a freight container or transport vehicle, and segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo, when performed by carrier personnel or in the presence of carrier personnel. For a bulk packaging, loading incidental to movement is filling the packaging with a hazardous material for the purpose of transporting it when

performed by carrier personnel or in the presence of carrier personnel (except as delegated at § 1.46(t) of this title), including transloading.

(3) *Unloading incidental to movement of a hazardous material.* Removing a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel, or, for a bulk packaging, emptying a hazardous material from the bulk packaging after the hazardous material has been delivered to the consignee and prior to the delivering carrier's departure from the consignee's facility or premises or, in the case of a private motor carrier, while the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement is completed is present during the unloading operation. (Emptying a hazardous material from a bulk packaging while the packaging is on board a vessel is subject to separate regulations as delegated at § 1.46(t) of this title.)

(4) *Storage incidental to movement of a hazardous material.* Storage of a transport vehicle, freight container, or package containing a hazardous material by any person between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is delivered to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a private motor carrier, between the time that a motor vehicle driver takes physical possession of the hazardous material for the purpose of transporting it until the driver relinquishes possession of the package containing the hazardous material at its destination and is no longer responsible for performing functions subject to the HMR with respect to that particular package. Storage incidental to movement includes rail cars containing hazardous materials that are stored on track that does not meet the definition of "private track or siding" in § 171.8 of this subchapter, even if those cars have been delivered to the destination shown on the shipping document.

(d) *Functions not subject to the requirements of the HMR.* The following are examples of activities to which the HMR do not apply:

(1) Storage of a freight container, transport vehicle, or package containing a hazardous material at an offeror facility prior to a carrier taking possession of the hazardous material for movement in transportation in commerce or, for a private motor carrier, prior to a motor vehicle driver taking physical possession of the hazardous

material for movement in transportation in commerce.

(2) Unloading of a hazardous material from a transport vehicle or a bulk packaging performed by a person employed by or working under contract to the consignee following delivery of the hazardous material by the carrier to its destination and departure from the consignee's premises of the carrier's personnel or, in the case of a private carrier, departure of the driver from the unloading area.

(3) Storage of a freight container, transport vehicle, or package containing a hazardous material after its delivery by a carrier to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a rail car, storage of a rail car on private track.

(4) Rail and motor vehicle movements of a hazardous material exclusively within a contiguous facility boundary where public access is restricted, except to the extent that the movement is on or crosses a public road or is on track that is part of the general railroad system of transportation, unless access to the public road is restricted by signals, lights, gates, or similar controls.

(5) Transportation of a hazardous material in a motor vehicle, aircraft, or vessel operated by a Federal, state, or local government employee solely for noncommercial Federal, state, or local government purposes.

(6) Transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle, including a leased or rented motor vehicle.

(7) Any matter subject to the postal laws and regulations of the United States.

(e) *Requirements of other Federal agencies.* Each facility at which pre-transportation or transportation functions are performed in accordance with the HMR may be subject to applicable standards and regulations of other Federal agencies.

(f) *Requirements of state and local government agencies.* (1) Each facility at which pre-transportation or transportation functions are performed in accordance with the HMR may be subject to applicable laws and regulations of state and local governments and Indian tribes, except to the extent that such laws and regulations are preempted under 49 U.S.C. 5125.

(2) Under § 5125, a non-Federal law or regulation may be preempted, unless otherwise authorized by another Federal statute, if—

(i) Complying with both the non-Federal law or regulation and a

requirement of Federal hazardous materials transportation law or the HMR is not possible;

(ii) The non-Federal law or regulation, as applied or enforced, is an obstacle to accomplishing and carrying out Federal hazardous material transportation law or the HMR; or

(iii) The non-Federal law or regulation is not substantively the same as a provision of Federal hazardous materials transportation law or the HMR with respect to—

(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 these documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(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.

(3) Preemption determination procedures are in subpart C of part 107 of this chapter.

(g) *Penalties for noncompliance.* Each person who knowingly violates a requirement of Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or an exemption or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than \$27,500 and not less than \$250 for each violation. When a violation is a continuing one and involves transporting of hazardous materials or causing them to be transported or shipped, each day of the violation constitutes a separate offense. Each person who knowingly violates a requirement in § 171.2(l) of this subchapter or willfully violates a provision of Federal hazardous material transportation law or an order issued under Federal hazardous material transportation law may be fined under Title 18, United States Code, or imprisoned for not more than 5 years, or both.

■ 3. Section 171.2 is revised to read as follows:

§ 171.2 General requirements.

(a) Each person who performs a function covered by this subchapter

must perform that function in accordance with this subchapter.

(b) Each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of this subchapter or an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter.

(c) Each person who performs a function covered by or having an effect on a specification or activity prescribed in part 178, 179, or 180 of this subchapter, an approval issued under this subchapter, or an exemption issued under subchapter A of this chapter, must perform the function in accordance with that specification, approval, or exemption, as appropriate.

(d) No person may offer or accept a hazardous material for transportation in commerce or transport a hazardous material in commerce unless that person is registered in conformance with subpart G of part 107 of this chapter, if applicable.

(e) No person may offer or accept a hazardous material for transportation in commerce unless the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of this subchapter or an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter.

(f) No person may transport a hazardous material in commerce unless the hazardous material is transported in accordance with applicable requirements of this subchapter or an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter.

(g) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this subchapter governing its use in the transportation of a hazardous material in commerce unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired, and retested in accordance with the applicable requirements of this subchapter. No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired, and retested in accordance with the applicable requirements of the exemption, approval, or registration issued under

this subchapter or subchapter A of this chapter. The requirements of this paragraph apply whether or not the packaging or container is used or to be used for the transportation of a hazardous material.

(h) The representations, markings, and certifications subject to the prohibitions of paragraph (g) of this section include—

(1) Specification identifications that include the letters “ICC”, “DOT”, “CTC”, “MC”, or “UN”;

(2) Exemption, approval, and registration numbers that include the letters “DOT”, “EX”, “M”, or “R”; and

(3) Test dates associated with specification, registration, approval, retest, or exemption markings indicating compliance with a test or retest requirement of the HMR, or an exemption, approval, or registration issued under the HMR or under subchapter A of this chapter.

(i) No person may certify that a hazardous material is offered for transportation in commerce in accordance with the requirements of this subchapter unless the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of this subchapter or an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter. Each person who offers a package containing a hazardous material for transportation in commerce in accordance with the requirements of this subchapter or an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter, must assure that the package remains in condition for shipment until it is in the possession of the carrier.

(j) No person may, by marking or otherwise, represent that a container or package for transportation of a hazardous material is safe, certified, or in compliance with the requirements of this chapter unless it meets the requirements of all applicable regulations issued under Federal hazardous material transportation law.

(k) No person may, by marking or otherwise, represent that a hazardous material is present in a package, container, motor vehicle, rail car, aircraft, or vessel if the hazardous material is not present.

(l) No person may alter, remove, deface, destroy, or otherwise unlawfully tamper with any marking, label, placard, or description on a document required by Federal hazardous material transportation law or the regulations issued under Federal hazardous material transportation law. No person

may alter, deface, destroy, or otherwise unlawfully tamper with a package, container, motor vehicle, rail car, aircraft, or vessel used for the transportation of hazardous materials.

(m) No person may falsify or alter an exemption, approval, registration, or other grant of authority issued under this subchapter or subchapter A of this chapter. No person may offer a hazardous material for transportation or transport a hazardous material in commerce under an exemption, approval, registration or other grant of authority issued under this subchapter or subchapter A of this chapter if such grant of authority has been altered without the consent of the issuing authority. No person may represent, mark, certify, or sell a packaging or container under an exemption, approval, registration or other grant of authority issued under this subchapter or subchapter A of this chapter if such grant of authority has been altered without the consent of the issuing authority.

■ 4. In § 171.8, the definition for "sheathing" is removed; definitions for "carrier," "person," and "private track or private siding," are revised; and definitions for "Administrator," "Associate Administrator," "commerce," "consignee," "hazmat," "HMR," "loading incidental to movement," "movement," "pre-transportation function," "Secretary," "storage incidental to movement," "transloading," "transportation or transport," "transportation facility," and "unloading incidental to movement" are added in alphabetical order, to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Administrator means the Administrator, Research and Special Programs Administration.

* * * * *

Associate Administrator means the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

* * * * *

Carrier means a person who transports passengers or property in commerce by rail car, aircraft, motor vehicle, or vessel.

* * * * *

Commerce means trade or transportation in the jurisdiction of the United States within a single state; between a place in a state and a place outside of the state; or that affects trade or transportation between a place in a state and place outside of the state.

* * * * *

Consignee means the person or place shown on a shipping document, package marking, or other media as the location to which a carrier is directed to transport a hazardous material.

* * * * *

Hazmat means a hazardous material.

* * * * *

HMR means the Hazardous Materials Regulations, Parts 171 through 180 of this chapter.

* * * * *

Loading incidental to movement means loading by carrier personnel or in the presence of carrier personnel of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel for the purpose of transporting it, including the loading, blocking and bracing a hazardous materials package in a freight container or transport vehicle, and segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo. For a bulk packaging, *loading incidental to movement* means filling the packaging with a hazardous material for the purpose of transporting it. *Loading incidental to movement* includes transloading.

* * * * *

Movement means the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel.

* * * * *

Person means an individual, corporation, company, association, firm, partnership, society, joint stock company; or a government, Indian tribe, or authority of a government or tribe offering a hazardous material for transportation in commerce or transporting a hazardous material to support a commercial enterprise. This term does not include the United States Postal Service or, for purposes of 49 U.S.C. 5123 and 5124, a Department, agency, or instrumentality of the government.

* * * * *

Pre-transportation function means a function specified in the HMR that is required to assure the safe transportation of a hazardous material in commerce, including—

(1) Determining the hazard class of a hazardous material.

(2) Selecting a hazardous materials packaging.

(3) Filling a hazardous materials packaging, including a bulk packaging.

(4) Transloading a hazardous material at an intermodal transfer facility from one bulk packaging to another bulk packaging for purposes of continuing

the movement of the hazardous material in commerce.

(5) Securing a closure on a filled or partially filled hazardous materials package or container or on a package or container containing a residue of a hazardous material.

(6) Marking a package to indicate that it contains a hazardous material.

(7) Labeling a package to indicate that it contains a hazardous material.

(8) Preparing a shipping paper.

(9) Providing and maintaining emergency response information.

(10) Reviewing a shipping paper to verify compliance with the HMR or international equivalents.

(11) For each person importing a hazardous material into the United States, providing the shipper with timely and complete information as to the HMR requirements that will apply to the transportation of the material within the United States.

(12) Certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR.

(13) Loading, blocking, and bracing a hazardous materials package in a freight container or transport vehicle.

(14) Segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo.

(15) Selecting, providing, or affixing placards for a freight container or transport vehicle to indicate that it contains a hazardous material.

* * * * *

Private track or *Private siding* means:

(i) Track located outside of a carrier's right-of-way, yard, or terminals where the carrier does not own the rails, ties, roadbed, or right-of-way, or

(ii) Track leased by a railroad to a lessee, where the lease provides for, and actual practice entails, exclusive use of that trackage by the lessee and/or a general system railroad for purpose of moving only cars shipped to or by the lessee, and where the lessor otherwise exercises no control over or responsibility for the trackage or the cars on the trackage.

* * * * *

Secretary means the Secretary of Transportation.

* * * * *

Storage incidental to movement means storage of a transport vehicle, freight container, or package containing a hazardous material by any person between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is physically

delivered to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a private motor carrier, between the time that a motor vehicle driver takes physical possession of the hazardous material for the purpose of transporting it until the driver relinquishes possession of the hazardous material at its intended destination and is no longer responsible for performing functions subject to the HMR with respect to that particular package. *Storage incidental to movement* includes rail cars containing hazardous materials, even if they have been delivered to the destination indicated on the shipping document, except those stored on private track.

* * * * *

Transloading means the transfer of a hazardous material at an intermodal transfer facility from one bulk packaging to another for purposes of continuing the movement of the hazardous material in commerce.

Transportation or transport means the movement of property and loading, unloading, or storage incidental to that movement.

* * * * *

Unloading incidental to movement means removing a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel or, for a bulk packaging, emptying a hazardous material from the bulk packaging after the hazardous material has been delivered to the consignee and prior to the delivering carrier's departure from the consignee's facility or premises or, in the case of a private motor carrier, while the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement is completed is present during the unloading operation. (Emptying a hazardous material from a bulk packaging while the packaging is on board a vessel is subject to separate regulation as delegated at § 1.46(t) of this title.) *Unloading incidental to movement* includes transloading.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 5. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.45 and 1.53

§ 173.1 [Amended]

■ 6. In § 173.1, paragraph (c) is removed and paragraph (d) is redesignated as new paragraph (c).

■ 7. Section 173.30 is revised to read as follows:

§ 173.30 Loading and unloading of transport vehicles.

A person who is subject to the loading and unloading regulations in this subchapter must load or unload hazardous materials into or from a transport vehicle or vessel in conformance with the applicable loading and unloading requirements of parts 174, 175, 176, and 177 of this subchapter.

■ 8. Section 173.31 is amended by adding new paragraph (g) to read as follows:

§ 173.31 Use of tank cars.

* * * * *

(g) *Tank car loading and unloading.* When placed for loading or unloading and before unsecuring any closure, a tank car must be protected against movement or coupling as follows:

(1) The unloader must secure access to the track to prevent entry by other rail equipment, including motorized service vehicles. Derails, lined and blocked switches, portable bumper blocks, or other equipment that provides an equivalent level of security may be used to satisfy this requirement.

(2) Caution signs must be placed between the rails to give necessary warning to persons approaching the car(s) from the open end of a siding and must be left up until after all closures are secured and the cars are in proper condition for transportation. The signs must be of a durable material, blue in color, rectangular in shape, at least 30.48 cm (12 inches) high by 38.10 cm (15 inches) wide, and bear the word "STOP." The word "STOP" must appear in white letters at least 10.16 cm (4 inches) high. Additional words, such as "Tank Car Connected" or "Crew at Work," may also appear in white letters under the word "STOP."

(3) At least one wheel on the tank car must be blocked against movement in both directions, and the hand brakes must be set. If multiple tank cars are coupled together, sufficient hand brakes must be set and wheels blocked to prevent movement in both directions.

§§ 173.3, 173.6, 173.24a, 173.62, 173.166, 173.171, 173.181, 173.185, 173.189, 173.219, 173.308, 173.335, and 173.416 [Amended]

■ 9. In addition, in Part 173, the word "movement" is revised to read "shifting" in each of the following places:

- a. Section 173.3(c)(2);
- b. Section 173.6(b)(1) and (b)(3);
- c. Section 173.24a(a)(3);
- d. Section 173.166(e)(4)(iii);
- f. Section 173.171 (d);

- g. Section 173.181(a)(2);
- h. Section 173.189(b) and (d)(4)(i);
- i. Section 173.335(c); and
- j. Section 173.416(f).

■ 10. In addition, in Part 173, the term "freedom of movement" is revised to read "free moving" in the table in § 173.62(c) under Packing Instruction 131, each time it appears.

§§ 173.185, 173.219, and 173.308 [Amended]

■ 11. In addition, in Part 173, the word "movement" is revised to read "moving" in each of the following places:

- a. Section 173.185(e)(4), (g)(1), and (g)(2);
- b. Section 173.219(b)(3); and
- c. Section 173.308(a)(4).

PART 174—CARRIAGE BY RAIL

■ 12. The authority citation for Part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR Part 1.53

■ 13. In § 174.67, paragraphs (a)(1) through (a)(3) are revised, paragraph (a)(4) is redesignated as paragraph (a)(6), new paragraphs (a)(4) and (a)(5) are added, paragraphs (i) and (j) are revised, paragraph (k) is redesignated paragraph (l), and a new paragraph (k) is added, to read as follows:

§ 174.67 Tank car unloading.

(a) For transloading operations, the following rules must be observed:

(1) Unloading operations must be performed by reliable persons properly instructed in unloading hazardous materials and made responsible for careful compliance with this part.

(2) The unloader must apply the handbrake and block at least one wheel to prevent movement in any direction. If multiple tank cars are coupled together, sufficient hand brakes must be set and wheels blocked to prevent movement in both directions.

(3) The unloader must secure access to the track to prevent entry by other rail equipment, including motorized service vehicles. Derails, lined and blocked switches, portable bumper blocks, or other equipment that provides an equivalent level of security may be used to satisfy this requirement.

(4) The unloader must place caution signs on the track or on the tank cars to warn persons approaching the cars from the open end of the track that a tank car is connected to unloading equipment. The caution signs must be of metal or other durable material, rectangular, at least 30 cm. (12 inches) high by 38 cm. (15 inches) wide, and bear the word, "STOP". The word "STOP" must

appear in letters at least 10 cm. (3.9 inches) high. The letters must be white on a blue background. Additional words, such as "Tank Car Connected" or "Crew at Work" may also appear.

(5) The unloading facility operator must maintain written safety procedures (such as those it may already be required to maintain pursuant to the Department of Labor's Occupational Safety and Health Administration requirements in 29 CFR 1910.119 and 1910.120) in a location where they are immediately available to hazmat employees responsible for tank car unloading.

* * * * *

(i) Throughout the entire period of unloading and while a tank car has unloading equipment attached, the facility operator must assure that the tank car is:

(1) Attended by a designated hazmat employee who is physically present and who has an unobstructed view of the unloading operation; or

(2) Monitored by a signaling system (e.g., video system, sensing equipment, or mechanical equipment) that is observed by a designated hazmat employee located either in the immediate area of the tank car or at a remote location within the facility, such as a control room. The signaling system must—

(i) Provide a level of surveillance equivalent to that provided in subparagraph (1) of this paragraph (i); and

(ii) Provide immediate notification to a designated hazmat employee of any system malfunction or other emergency so that, if warranted, responsive actions may be initiated immediately.

(j) Attendance is not required when piping is attached to a top outlet of a tank car, equipped with a protective housing required under § 179.100–12 of this subchapter, for discharge of lading under the following conditions:

(1) All valves are tightly closed.

(2) The piping is not connected to hose or other unloading equipment and is fitted with a cap or plug of appropriate material and construction.

(3) The piping extends no more than 15.24 centimeters (6 inches) from the outer edge of the protective housing.

(k) In the absence of the unloader, a tank car may stand with unloading connections attached when no product is being transferred under the following conditions:

(1) The facility operator must designate an employee responsible for on-site monitoring of the transfer facility. The designated employee must be made familiar with the nature and properties of the product contained in the tank car; procedures to be followed in the event of an emergency; and, in the event of an emergency, have the ability and authority to take responsible actions.

(2) When a signaling system is used in accordance with paragraph (i) of this section, the system must be capable of alerting the designated employee in the event of an emergency and providing immediate notification of any monitoring system malfunction. If the monitoring system does not have self-monitoring capability, the designated employee must check the monitoring system hourly for proper operation.

(3) The tank car and facility shutoff valves must be secured in the closed position.

(4) Brakes must be set and wheels locked in accordance with paragraph (a)(2) of this section.

(5) Access to the track must be secured in accordance with paragraph (a)(3) of this section.

* * * * *

§§ 174.110, 174.112, and 174.115 [Amended]

■ 14. In addition, in Part 174, the word "movement" is revised to read "shifting" in each of the following places:

■ a. Section 174.110;

■ b. Section 174.112(b) and (c)(3) each time it appears; and

■ c. Section 174.115(a) and (b)(3) each time it appears.

PART 175—CARRIAGE BY AIRCRAFT

■ 15. The authority citation for Part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 175.81 [Amended]

■ 16. In § 175.81(a), the word "movement" is revised to read "shifting".

PART 176—CARRIAGE BY VESSEL

■ 17. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§§ 176.69, 176.76, 176.78, 176.93, 176.116, 176.132, 176.168, and 176.200 [Amended]

■ 18. In Part 176, the word "movement" is revised to read "shifting" in each of the following places:

■ a. Section 176.69(d);

■ b. Section 176.76(a)(2) each time it appears;

■ c. Section 176.116(d);

■ e. Section 176.132(c); and

■ f. Section 176.200(b) and (c) each time it appears.

■ 19. In Part 176, the word "movement" is revised to read "motion" in § 176.93(a)(1).

■ 20. In Part 176, the word "movement" is revised to read "moving" in each of the following places:

■ a. Section 176.78(f)(8); and

■ b. Section 176.168(g).

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 21. The authority citation for Part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§§ 177.834, 177.840, and 177.870 [Amended]

■ 22. In Part 177, the word "movement" is revised to read "shifting" in each of the following places:

■ a. Section 177.834(a);

■ b. Section 177.840(b)(3); and

■ c. Section 177.870(e).

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 23. The authority citation for Part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§§ 178.601, 178.704 [Amended]

■ 24. In Part 178, the word "movement" is revised to read "moving" in § 178.601(g)(1)(i)(D), (g)(1)(ii), and (g)(4)(v).

■ 25. In Part 178, the word "movement" is revised to read "motion" in § 178.704(d)(3).

Issued in Washington, DC on October 22, 2003 under authority delegated in 49 CFR Part 1.

Elaine E. Joost,

Acting Deputy Administrator.

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**Thursday,
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Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 60

**Mandatory Country of Origin Labeling of
Beef, Lamb, Pork, Fish, Perishable
Agricultural Commodities, and Peanuts;
Proposed Rule**

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 60**

[No. LS-03-04]

RIN 0581-AC26

Mandatory Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Security and Rural Investment Act of 2002 (Farm Bill) and the 2002 Supplemental Appropriations Act (Appropriations Act) amended the Agricultural Marketing Act of 1946 (Act) to require retailers to notify their customers of the country of origin of covered commodities beginning September 30, 2004. The law also requires the Department of Agriculture (USDA) to issue regulations to implement a mandatory country of origin labeling (COOL) program not later than September 30, 2004. Covered commodities include muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities (fresh and frozen fruits and vegetables); and peanuts. This proposed rule contains definitions, the requirements for consumer notification and product marking, and the recordkeeping responsibilities of both retailers and suppliers.

DATES: Comments must be submitted on or before December 29, 2003 to be assured of consideration.

ADDRESSES: Send written comments to: Country of Origin Labeling Program, Room 2092-S; Agricultural Marketing Service (AMS), USDA; STOP 0249; 1400 Independence Avenue, SW.; Washington, DC 20250-0249, or by facsimile to 202/720-3499, or by e-mail to cool@usda.gov. State that your comments refer to Docket No. LS-03-04. Comments received will be posted to the AMS Web site at: <http://www.ams.usda.gov/cool/>. Comments sent to the above location that specifically pertain to the information collection and recordkeeping requirements of this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th

Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Robert Keeney, Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, by telephone on 202/720-4722, or via e-mail at:

robert.keeney@usda.gov; or William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, by telephone on 202/720-5705, or via e-mail at: william.sessions@usda.gov.

SUPPLEMENTARY INFORMATION:**Questions and Answers Concerning This Proposed Rule***What Are the General Requirements of Country of Origin Labeling?*

The Farm Bill (Public Law 107-171) and the Appropriations Act (Public Law 107-206) amended the Act (7 U.S.C. 1621 *et seq.*) to require retailers to notify their customers of the country of origin of beef (including veal), lamb, pork, fish, perishable agricultural commodities, and peanuts beginning September 30, 2004. The law also requires USDA to issue regulations to implement this program no later than September 30, 2004. The law defines the terms “retailer” and “perishable agricultural commodity” as having the meanings given those terms in the Perishable Agricultural Commodities Act of 1930 (PACA)(7 U.S.C. 499 *et seq.*). Food service establishments are specifically excluded. In addition, the law specifically outlines the criteria a covered commodity must meet to bear a “United States country of origin” label.

Why Can't USDA Track Only Imported Products and Consider All Other Products To Be of "U.S. Origin?"

The COOL provision of the Farm Bill applies to *all* covered commodities. Moreover, the law specifically identifies the criteria that products of U.S. origin must meet. For beef, pork, and lamb, for example, U.S. origin can only be claimed if derived from animals that are born, raised, and slaughtered in the United States. The law further states that “Any person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer indicating the country of origin of the covered commodity.” And, the law does not provide authority to control the movement of product, imported or domestic. In fact, the use of a mandatory identification system that would be required to track controlled product through the entire chain of commerce is specifically prohibited.

The Internal Revenue Service Essentially Uses Self-Certification, Backed Up by Selective Audits, for Those of Us Who File Income Taxes. Why Couldn't Self-Certification Work for COOL?

The COOL law requires firms or individuals that supply covered commodities to retailers to provide information indicating the product's country of origin. This information must address the production steps included in the origin claim (*i.e.*, born, raised, and slaughtered or produced). Self-certification documents or affidavits may play a role in assuring that auditable records are available throughout the chain of custody, but the auditable records must themselves also be available to ensure credibility of country of origin labeling claims.

With a Number of Covered Commodities, Particularly Produce Items, Already Labeled as to Country of Origin at Retail, How Big a Burden Will Mandatory Country of Origin Labeling Actually Cause?

It is certainly true that some covered commodities, particularly produce items, are already being labeled as to country of origin at retail establishments. It is also the case that existing Federal law and regulation (*e.g.*, PACA) help ensure the truthfulness of such labels. At the same time, the labeling of such commodities with country of origin information is neither mandatory nor universal at the current time. Thus, while the burden of implementing country of origin labeling for those commodities should be lessened, some additional effort may still be required. For example, suppliers will need to ensure that documentation is complete and properly maintained. Retailers will need to manage their product displays to ensure country of origin information is being properly conveyed to their customers.

Why Can't USDA Use The Same System To Verify Compliance With Country of Origin Labeling That It Uses for Meat Products Under USDA's Commodity Procurement Program?

There are several reasons why the systems must be different. First, the requirements for origin are not the same. The COOL law for U.S. origin requires meat products to be from cattle, hogs, and sheep that are born, raised, and slaughtered in the United States. USDA's commodity procurement program requires meat products to come from U.S.-produced livestock. The definition of U.S.-produced livestock excludes only imported meat and meat

from livestock imported for direct slaughter.

The system for verifying compliance with USDA's commodity procurement program is a "command and control" type system. USDA, through various certification or audit programs, confirms the applicable claim at the beginning of the process, then tracks and controls the movement of the product throughout the rest of the marketing chain. A similar system for COOL would require USDA to verify that livestock were born in the United States, then track and control the movement of those livestock and resulting meat products through the marketing chain to retail. However, the COOL law specifically precludes USDA from imposing this type of control.

How Will the Mandatory Country of Origin Labeling Requirements Impact Existing U.S. Cow and Bull Herds?

The law requires country of origin labeling for all covered commodities sold at retail beginning September 30, 2004, and does not contain a grandfathering provision that would exclude meat from these animals from the mandatory labeling requirements. If records as to where these animals were born, raised, and slaughtered do not exist, retailers could not substantiate a country of origin claim that would comply with the law.

Are Cattle, Hogs, and Sheep Covered Commodities?

No. However, the law requires suppliers to provide country of origin information to retailers, including the "born, raised, and slaughtered" information required to make U.S. origin claims for the covered commodities beef, pork, and lamb. The records needed to substantiate this information can only be created by persons having first-hand knowledge of the country designation for each production step declared in the country of origin claim. Thus, livestock producers will need to create and/or maintain these records to enable retail suppliers to provide retailers with correct country of origin information.

This proposed rule is issued pursuant to the Farm Bill and the Appropriations Act, which amended the Act.

On October 11, 2002, AMS published Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts (67 FR 63367) providing interested parties with 180 days to comment on the utility of the voluntary guidelines.

On November 21, 2002, AMS published a notice requesting emergency approval of a new

information collection (67 FR 70205) providing interested parties with a 60-day period to comment on AMS' burden estimates associated with the recordkeeping requirements as required by the Paperwork Reduction Act of 1995 (PRA).

On January 22, 2003, AMS published a notice extending this comment period (68 FR 3006) an additional 30 days.

In response to these requests for comment, AMS received over 2,400 written comments. In addition, as another means to receive public input with respect to this rulemaking action, AMS held 12 formal educational and listening sessions throughout the United States to afford interested parties the opportunity to provide comments and ideas on the mandatory COOL program's development. Over 3,300 people attended the listening sessions and approximately 580 people provided oral testimony.

AMS has considered all of the comments received to date in developing this proposed rule. Several key concepts have emerged from both the written comments and the public testimony from the listening and educational sessions:

- General opinions of the law (*i.e.*, both pro and con).
- Conflicting testimony regarding the costs that will be incurred by the industry in complying with the law.
- Opinion that the law will improve the food safety of covered commodities.
- Conflicting testimony as to whether there will be improvement in the marketplace because of consumers' willingness to pay for U.S. origin of covered commodities.
- Opinion that poultry will be placed at a competitive advantage because it is exempt from labeling under COOL.
- Opinion that significant pricing disparity will exist between retailers required to label under COOL and those that are exempt such as fish markets and butcher shops.
- Opinion that the law requiring mandatory COOL should be repealed and the program should be made permanently voluntary.
- Opinions that COOL should be implemented immediately due to the Canadian BSE incident.
- Considerable testimony that presumption of U.S. origin should be allowed.
- Considerable testimony that only imported products should be tracked and controlled.
- Considerable testimonies that COOL should be implemented in the least costly manner possible.

- Conflicting testimony on how to interpret the scope of covered commodities.

- Considerable testimony that producers should be allowed to self-certify the origin of their animals.

- Considerable testimony that required recordkeeping should be minimized and should allow for the use of existing records to the maximum extent possible.

- Testimony that this law may violate United States trade obligations under the World Trade Organization.

AMS has accepted many of the commenters' recommendations in developing this proposed rule. However, several of the recommendations provided by the commenters are not in conformance with the law and were therefore not adopted. Further discussion on the key concerns raised by the commenters can be found in each applicable section. AMS has also included a "Questions and Answers" section to address a few of the more common questions posed by the commenters.

Background

Section 10816 of Public Law 107-171 (7 U.S.C. 1638-1638d) amended the Act (7 U.S.C. 1621 *et seq.*) to require retailers to inform consumers of the country of origin of covered commodities beginning September 30, 2004.

The intent of this law is to provide consumers with additional information on which to base their purchasing decisions. It is not a food safety or animal health measure. COOL is a retail labeling program and as such does not address food safety or animal health concerns. Food products, both imported and domestic, must meet the food safety standards of FSIS and/or the Food and Drug Administration (FDA), as applicable. In addition, all food products must also meet FDA labeling standards as well as all other applicable FDA regulations and standards.

The law defines the term "covered commodity" as muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities (fresh and frozen fruits and vegetables); and peanuts. The law defines the terms "retailer" and "perishable agricultural commodity" as having the meanings given those terms in PACA.

The law specifically outlines the criteria a covered commodity must meet in order to bear a "United States country of origin" declaration. In the case of beef, lamb, and pork, the covered

commodity must be derived from an animal that was exclusively born, raised, and slaughtered in the United States. In the case of beef, this definition also includes cattle exclusively born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States. In the case of farm-raised fish and shellfish, the covered commodity must be derived from fish or shellfish hatched, raised, harvested, and processed in the United States. In the case of wild fish and shellfish, the covered commodity must be derived from fish or shellfish harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. In addition, the law also requires the country of origin declaration to distinguish between wild and farm-raised fish and shellfish. In the case of perishable agricultural commodities and peanuts, the products must be produced in the United States.

To convey the country of origin information, the law states that retailers may use a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. Food service establishments, such as restaurants, cafeterias, food stands, and other similar facilities are exempt from these labeling requirements.

The law makes reference to the definition of "retailer" in PACA as the meaning of "retailer" for the application of the labeling requirements under the COOL law. Under PACA, a retailer is any person who is a dealer engaged in the business of selling any perishable agricultural commodity solely at retail when the invoice cost of all purchases of produce exceeds \$230,000 during a calendar year. This definition excludes butcher shops, fish markets, and small grocery stores that either sell fruits and vegetables at a level below this dollar volume threshold or do not sell any fruits and vegetables at all.

The law requires any person engaged in the business of supplying a covered commodity to a retailer to provide the retailer with the product's country of origin information. In addition, the law states the Secretary of Agriculture (Secretary) may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable recordkeeping audit trail. The law prohibits the Secretary from using a mandatory identification system to verify the country of origin of a covered

commodity and provides examples of existing certification programs that may be used to certify the country of origin of a covered commodity. The law contains enforcement provisions for both retailers and suppliers that include civil penalties of up to \$10,000 for each violation. The law also encourages the Secretary to enter into partnerships with States with enforcement infrastructure to the extent possible to assist in the program's administration.

Key Components of the Law

Defining Covered Commodities

The law defines the term "covered commodity" as: Muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities; and peanuts.

Exclusion for Ingredient in a Processed Food Item

The law excludes items from needing to bear a country of origin declaration when a covered commodity is an "ingredient in a processed food item." However, Public Law 107-171 does not define a "processed food item." Therefore, AMS must define what constitutes a "processed food item" for each covered commodity in the context of Public Law 107-171 for the purposes of this proposed regulation.

In defining "processed food item" in the voluntary guidelines (67 FR 63367), AMS recognized that the term "processed" has been previously defined in other regulations promulgated by AMS, such as those issued in conjunction with the National Organic Program. AMS also stated that it did not believe that these definitions were suitable for use in the COOL program because using such a broad definition would exempt commodities that Congress clearly intended to be governed under this law.

AMS received numerous comments relating to the definition of a "processed food item." Many commenters suggested that the definition of processed food item published in the voluntary guidelines (67 FR 63367) resulted in significantly reducing the number of food items Congress intended to be covered by the Act. These commenters contend, for example, that a roast remains a muscle cut of beef even if cooked, salted, or flavored.

Conversely, many other commenters suggested that the definition published in the voluntary guidelines (67 FR 63367) was too narrow and resulted in the inclusion of products that Congress did not intend to be covered by the Act.

These commenters contend that any item bearing an ingredient statement should not be required to be labeled under COOL.

As this is a retail labeling law, to help guide AMS in determining how to define a "processed food item," AMS viewed the scope of covered commodities in the context of how these products are marketed at the retail level. For example, most peanuts sold at retail are shelled and roasted. To interpret the law as only applying to green peanuts would result in the exclusion of most peanuts sold at retail. Similarly, to exclude canned fish would result in the exclusion of a large share of the fish products sold at retail.

To address the concerns raised by the commenters, AMS has chosen to define a "processed food item" utilizing a 2-step approach. First, a retail item derived from a covered commodity that has undergone a physical or chemical change, causing the character to be different from that of the covered commodity is deemed to be a processed food item. Examples include oranges that have been squeezed and made into orange juice, a fresh leg of pork that has been cured and made into a ham, peanuts that have been ground and made into peanut butter, or flesh of a fish that has been restructured and made into a fish stick. These retail items have undergone a physical or chemical change such that they no longer retain the characteristics of the covered commodity and thus consumers would not use the items in the same manner as they would the covered commodities. Second, a retail item derived from a covered commodity that has been combined with either (1) other covered commodities, or (2) other substantive food components (e.g., chocolate, stuffing) resulting in a distinct retail item that is no longer marketed as a covered commodity. Examples include a salad mix that contains lettuce and tomatoes, peanuts in a candy bar, a stuffed pork chop, or seafood medley.

Alternatively, some commenters suggested that a processed food item could be defined as to exclude any product that bears an ingredient statement. These commenters contend that this would establish a bright line standard that would enable companies throughout the marketing chain to readily determine whether the commodities they produce or sell would be covered commodities. Utilizing such a definition would result in the exclusion of many products, including those products in which the ingredient statement lists only the commodity itself. Accordingly, AMS invites further

comment on the practicality of this alternative definition.

Similarly, some commenters suggested that any covered commodity that has undergone processing as defined by other existing Federal regulations (e.g., PACA, National Organic Program, and AMS Processed Fruit and Vegetable Inspection Program) should be defined as an ingredient in a processed food item, thereby being excluded from country of origin labeling under this law. Under this alternative any food item that represents additional transformation (e.g., canning, cooking, dehydration, drying, fermentation, milling, the addition of chemical substances, etc.) of a covered commodity would be considered a processed food item. In addition, a covered commodity that has been combined with other covered commodities or other ingredients would also be considered an ingredient in a processed food item and excluded from labeling. Utilizing such a definition could result in the exclusion of many retail products. Accordingly, AMS invites further comment on the practicality of this alternative definition.

As another alternative, some commenters suggested that a covered commodity that is further processed (i.e., cured, restructured, etc.) should not be excluded unless the covered commodity is mixed with other commodities to create a distinct food item such as a pizza or TV dinner. Accordingly, AMS also invites further comment on the practicality of this alternative definition.

AMS invites further comment on its preferred approach, the three identified alternatives, or any other alternative to the statutory exclusion for an ingredient in a processed food item.

Muscle Cuts of Beef, Lamb, and Pork

All muscle cuts of beef (including veal), lamb, and pork whether chilled, frozen, raw, cooked, seasoned, or breaded are covered commodities and would be subject to these regulations unless they are an ingredient in a processed food item.

In cases where a retail item is derived from a muscle cut of beef, lamb, or pork that has undergone a physical or chemical change, causing the character to be different than that of the covered commodity, that item is considered a processed food item and would be excluded from needing to bear a country of origin declaration under these regulations. For example, products such as restructured steaks and cured products like hams, corned beef briskets, and bacon would be considered processed food items as they

no longer retain the characteristics of the covered commodity and thus consumers would not use them in the same manner as they would the covered commodity. A consumer who desires a fresh pork leg for roasting would not substitute a cured product such as ham for the same purpose. In addition, these products also are not typically marketed with muscle meats at a retail establishment, but are generally marketed with other excluded meat products.

In cases where a retail item is derived from a covered commodity that has been combined with non-substantive components, and the character of the covered commodity is retained, the resulting product would not be considered a processed food item and would be subject to these regulations. Examples include products such as needle-tenderized steaks; fully-cooked entrees containing beef pot roast with gravy; seasoned, vacuum-packaged pork loins; and water-enhanced case ready steaks, chops, and roasts. These items would not be considered processed food items because the combination of non-substantive components and a muscle cut of beef, lamb, or pork does not result in a retail item with characteristics that are different from that of the covered commodity and would generally be used by consumers in the same manner.

In cases where a retail item consists of a muscle cut of beef, lamb, and pork and another covered commodity or other substantive food components resulting in a distinct retail item that is no longer marketed as a covered commodity, such an item is considered a processed food item and would be excluded from these regulations. An example includes an item such as a shish kabob containing beef and lamb, which would not be marketed as a muscle cut of beef or lamb, but would instead be marketed as a shish kabob.

Ground Beef, Lamb, and Pork

Under the law, ground beef, ground lamb, and ground pork are required to bear a country of origin declaration. FSIS rules and regulations specifically define the requirements for products to be labeled as "ground beef," "ground pork," and "ground lamb." As such, only those products that meet FSIS requirements to be labeled as "ground beef," "ground pork," or "ground lamb," must bear a country of origin declaration in accordance with this proposed rule.

Fresh and Frozen Fruits and Vegetables

Under the law, perishable agricultural commodities as defined by PACA are required to bear a country of origin

declaration. PACA defines perishable agricultural commodities as "any of the following, whether or not frozen or packed in ice: Fresh fruits and vegetables of every kind and character; and * * * includes cherries in brine as defined by the Secretary in accordance with trade usages." Therefore, frozen fruits and vegetables (e.g., a package of frozen strawberries or frozen french fried potatoes made from sliced potatoes) would be covered commodities subject to these regulations; however, cooked and canned fruits and vegetables would be exempt.

In order to maintain consistency with PACA, a frozen fruit or vegetable would be a covered commodity as long as it is not an ingredient in a processed food item and thus its "kind or character" has not been altered. For example, a retail item derived from a perishable agricultural commodity that has undergone a physical or chemical change, causing the character to be different from that of the covered commodity, is considered to be a processed food item and would be excluded from these regulations. For example, oranges that have been squeezed and made into orange juice or apples that have been mashed and made into fresh apple sauce would be considered processed food items as they no longer retain the characteristics of the covered commodity and thus consumers would not use them in the same manner as they would the covered commodity.

In cases where a retail item is derived from a perishable agricultural commodity combined with non-substantive components and the character of the covered commodity is retained, the resulting product is not considered a processed food item and would be subject to these regulations. Examples include products such as strawberries packaged with sugar, a preservative, or other flavoring. These items would not be considered processed food items because the addition of non-substantive components does not result in a retail item with characteristics that are different from that of the covered commodity and would generally be used by consumers in the same manner as the covered commodity.

In cases where a retail item is derived from a perishable agricultural commodity that has been combined with another covered commodity or other substantive food components resulting in a distinct retail item that is not marketed as a covered commodity, such an item is considered a processed food item and would be excluded from

these regulations. Examples include a frozen prepared pie that includes frozen sliced apples, a fruit cup containing cantaloupe, honeydew, and watermelon, or a vegetable tray containing both carrots and celery.

Peanuts

All peanuts, whether raw, roasted, in-shell, shelled, salted, seasoned, or canned are subject to these regulations unless they are an ingredient in a processed food item. Under the law, the term "covered commodity" includes "peanuts." Because the vast majority of peanuts sold at retail are shelled, roasted, and salted, AMS believes these products were intended to be covered by the law. Accordingly, shelled and/or roasted peanuts would be subject to these regulations as these retail items do not have characteristics that are different from that of a covered commodity. Further, peanuts that have been combined with other non-substantive ingredients such as oil, salt, or other flavorings would also be subject to these regulations. However, peanut products such as candy coated peanuts, peanut brittle, and peanut butter would not be subject these regulations as they are processed food items with a character that is different than that of the covered commodity. In addition, in cases where the peanuts are ingredients in other food products (e.g., peanuts in a candy bar), they would also be excluded from these regulations as they are not marketed as a covered commodity.

Wild and Farm-Raised Fish and Shellfish

All fish and shellfish, whether chilled, frozen, raw, cooked, breaded, or canned would be subject to these regulations unless they are an ingredient in a processed food item. This includes fillets, steaks, nuggets, and other flesh from wild or farm-raised fish and shellfish.

In cases where a retail item is derived from fish or shellfish that has undergone a physical or chemical change, causing the character to be different than that of the covered commodity, that item is considered a processed food item and would be excluded from these regulations. For example, items such as restructured shrimp or fish sticks and smoked and cured products would be considered processed food items because they no longer retain the characteristics of the covered commodity and thus consumers would not use them in the same manner as they would the covered commodity.

In cases where a retail item is derived from a fish or shellfish that has been

combined with non-substantive ingredients such as seasonings, preservatives, or breading, that item would not be considered a processed food item as it does not result in a retail item with characteristics that are different from that of the covered commodity and would generally be used by consumers in the same manner as the covered commodity.

In cases where a retail item is derived from a fish or shellfish that has been combined with another covered commodity or other substantive ingredients, that item would be considered a processed food item and would not be subject to these regulations as it results in a distinct retail item that is no longer marketed as a covered commodity. Examples include a bag of seafood medley, stuffed salmon, or surimi.

Labeling Country of Origin for Products Produced Exclusively in the United States

The law prescribes specific criteria that must be met for a covered commodity to bear a "United States country of origin" declaration. The specific requirements for each commodity are as follows:

(a) Beef—covered commodities must be derived exclusively from an animal that was born, raised, and slaughtered in the United States (including from an animal exclusively born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States).

(b) Lamb and Pork—covered commodities must be derived exclusively from an animal that was born, raised, and slaughtered in the United States.

(c) Farm-raised Fish and Shellfish—covered commodities must be derived exclusively from fish or shellfish hatched, raised, harvested, and processed in the United States.

(d) Wild Fish and Shellfish—covered commodities must be derived exclusively from fish or shellfish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel.

(e) Fresh and Frozen Fruits and Vegetables, and Peanuts—covered commodities must be derived exclusively from perishable agricultural commodities or peanuts grown in the United States.

Products otherwise meeting the requirements of "United States country of origin" may retain that designation after export for further processing in a foreign country and reentry into the

United States for retail sale provided a verifiable recordkeeping audit trail is maintained. However, in the case of meat and meat products, additional labeling information may be required by other Federal agencies.

Labeling Country of Origin for Imported Products (i.e., Produced Entirely Outside of the United States)

Currently, under the Tariff Act of 1930, as amended (19 U.S.C. 1304)(Tariff Act), most imported items, including food items, are required to be marked to indicate the "country of origin" to the "ultimate purchaser." The U.S. Bureau of Customs and Border Protection (CBP), which administers the Tariff Act, generally defines "ultimate purchaser" as the last person in the United States who will receive the article in the form in which it was imported and defines "country of origin" as the country of manufacture, production, or growth of any article of foreign origin entering the United States.

For example, under the Tariff Act, containers (e.g., cartons and boxes) holding imported fresh fruits and vegetables must bear a country of origin declaration (as defined by current CBP regulations) when entering the United States. However, under current law, a retailer may remove loose produce from a labeled container and display it in an open bin, selling each individual piece of produce without a country of origin declaration. In contrast, this proposed rule would require the retailer to notify the consumer as to the country of origin of all covered commodities whether individually packaged or displayed in a bin.

Currently, under the Federal Meat Inspection Act (FMA) (21 U.S.C. 601 *et seq.*), all meat products imported into the United States are required to bear the country of origin on the labeling of the container in which the products are shipped. If imported meat or meat products are intended to be sold intact to a grocer or household consumer (i.e., consumer-ready packaging), the country of origin is conveyed to those recipients. For example, if a bulk shipping container imported from country X, consists of pre-packaged and labeled meat cuts that are intended to be sold to grocers or at retail to household consumers as they are packaged, each package would bear a country of origin declaration (e.g., product of country X).

Currently, under the Tariff Act, if an article is destined for a U.S. processor or manufacturer in which it will undergo "substantial transformation," that processor or manufacturer is generally considered the "ultimate

purchaser.” As such, products that have been substantially transformed by a U.S. processor generally are not required to bear a country of origin declaration. Similarly, under current FSIS policies and directives, imported meat and meat products that are further processed in the United States are not required to bear country of origin declarations on the newly produced products or subsequent products made from them as these products are now considered to be domestic.

Under this proposed rule, imported covered commodities for which origin has already been established as defined by this regulation (e.g., born, raised, and slaughtered in the case of meat products or grown in the case of peanuts), shall retain their origin, as determined by CBP at the time the product entered the United States, through retail sale. For example, if an imported lamb carcass derived from an animal that was born, raised, and slaughtered in country X, was further processed in the United States, the resulting products derived from that carcass would be labeled as “product of the country X.” However, in this example, additional labeling information may be required by FSIS.

Products imported in consumer-ready packages, including food products (e.g., frozen green beans or canned ham), are currently required to bear a country of origin declaration on each individual package under both the Tariff Act and FMA. This proposed rule would not change these requirements.

Labeling Country of Origin When the Product Has Entered the United States During the Production Process (i.e., Mixed Origin That Includes the United States)

The law specifically defines the requirements for covered commodities to bear a “United States country of origin” declaration. However, the law is less specific for products produced completely or in part outside of the United States. In these instances, the law requires only that retailers inform consumers as to the country of origin of a covered commodity at the final point of sale.

Beef, Lamb, and Pork

The law states that only covered commodities derived from animals that were born, raised, and slaughtered in the United States may bear a “United States country of origin” declaration. AMS recognizes that a number of animals born in foreign countries are raised and slaughtered in the United States. In addition, some animals born in the United States are raised in foreign countries and then either slaughtered in

that foreign country or returned to the United States for slaughter.

The requirements for products to bear a “Product of the United States” declaration do not permit products derived from animals that were born, raised, or slaughtered in a foreign country to be labeled as “Product of the United States.” However, AMS recognizes that to label products of an animal that was only born in country X, but raised and slaughtered in the United States solely as “Product of country X” does not reference the significant production steps that occurred in the United States. Therefore, under this proposed rule, products that were produced in both a foreign country and the United States would be labeled at retail as being imported from the foreign country and also for the production steps that occurred in the United States. For example, pork products derived from a pig that was born in country X, raised and slaughtered in the United States would be labeled as “Imported from country X, Raised and Slaughtered in the United States.” Alternatively, products may also be labeled to specifically identify the production step(s) that occurred in the country other than the United States if the animal’s identity was maintained along with records to substantiate the origin claims. For example, products derived from a pig that was born and raised in country X and slaughtered in the United States could either be labeled as “Imported from country X, Slaughtered in the United States” or “Born and Raised in country X, Slaughtered in the United States.” AMS invites further comment on the use of alternative terms for the term “slaughtered.”

AMS also recognizes that in some cases, an animal will undergo production steps in two or more foreign countries prior to entering the United States for additional processing or a final process such as slaughter. In these cases, the meat products derived from an animal that was born in country X, raised in country Y, and slaughtered in the United States would be labeled at retail as being imported from country Y and for any production steps occurring in the United States. For example, if a calf was born in country X and raised in country Y before being imported for slaughter in the United States, the resulting meat products derived from this animal would be labeled as “Imported from country Y, Slaughtered in the United States.” Alternatively, if the animal’s identity was maintained along with the records to substantiate the origin claims, the product could be labeled to specifically identify the production step(s) (e.g., born, raised)

occurring in the country(ies) other than the United States. In the example cited above, the product could be labeled “Born in country X, Raised in country Y, Slaughtered in the United States.”

AMS invites further comment on this approach to the labeling of beef, lamb and pork, and requests identification of alternative approaches to labeling such products.

Wild and Farm-Raised Fish and Shellfish

In the case of wild fish and shellfish, the law states that a covered commodity can only bear a “United States country of origin” declaration if it is harvested in the waters of the United States or aboard a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. In the case of farm-raised fish and shellfish, the law states that a covered commodity can only be labeled as “Product of the U.S.” if it is hatched, raised, harvested, and processed in the United States. However, the law does not define the term processed.

AMS received numerous comments requesting that the regulations for the mandatory COOL program conform to existing regulations of CBP wherever possible to eliminate redundancies, costs, and conflicts. As such, for wild and farm-raised fish and shellfish, AMS has defined “processed” as any process that effects substantial transformation as defined by CBP Rules of Origin.

In the case of wild fish and shellfish, if a covered commodity was harvested in the waters of the U.S. or by a U.S. flagged vessel and processed in country X or aboard a country X flagged vessel, the covered commodity shall be labeled at retail as “Product of country X.” For example, if a fish was caught in U.S. waters and processed into individually quick-frozen fillets in country Y, such product would be labeled as “Product of country Y” because it has been substantially transformed as defined by CBP and thus does not meet the requirements to bear a U.S. origin declaration. Alternatively, the product may also be labeled to include the production step occurring in the United States if the product’s identity was maintained along with records to substantiate the origin claims. In the example provided above, the product could be labeled as “product of country Y, harvested in the United States.”

If a covered commodity was harvested in country Y and processed in the United States or aboard a U.S. flagged vessel, the product shall be labeled at retail as “Imported from country Y, processed in the United States.” In all cases, the covered commodity must also

be labeled to indicate that it was derived from wild fish and/or shellfish.

In the case of farm-raised fish, if a covered commodity was hatched in country X, and raised, harvested and/or processed in the United States, the product would be labeled as being imported from country X and for the production step(s) occurring in the United States. For example, if a fish was hatched in country X and processed in the United States, the product would be labeled as "Imported from country X, Processed in the United States."

If a covered commodity was hatched, raised, and harvested in the United States and processed in country X, the product shall be labeled at retail as "Product of country X." Alternatively, the product may also be labeled to include the production step(s) occurring in the United States if the product's identity was maintained along with records to substantiate the origin claims. In the example given above, the product could be labeled as "Product of country X, hatched, raised, and harvested in the United States." In all cases, the covered commodity must also be labeled to indicate that it was derived from farm-raised fish and/or shellfish. Farm-raised fish means fish or shellfish that have been harvested in controlled or selected environments, including ocean-ranched (e.g., penned) fish and shellfish confined in managed beds; and fillets, steaks, nuggets, and any other flesh from a farm-raised fish or shellfish. For example, mussels on rope culture and oysters on leased land would be considered farm-raised.

AMS invites further comment on this approach to the labeling of wild and farm-raised fish and shellfish and requests identification of alternative approaches to labeling such products.

Defining Country of Origin for Blended Products

Many of the covered commodities required to bear a country of origin declaration under the law are commingled or blended products that were prepared from raw material sources having different origins (e.g., bagged lettuce, ground beef, shrimp, etc.). However, the law does not specify how these products should be labeled.

In defining country of origin for blended or mixed products in the voluntary guidelines (67 FR 63367), AMS recognized that it could be misleading to consumers if only a small percentage of a covered commodity mixture met the definition of United States origin and yet the mixture could list the United States first ahead of other countries in the country of origin declaration on the package. As such,

under the voluntary guidelines, the country of origin declaration was to reflect the country of origin for each raw material source of the mixed or blended retail item by order of predominance by weight. In addition, under the voluntary guidelines, containers of mixed or blended products in which the individual constituents could be separately identified, would have to bear a country of origin declaration individually identifying the country of origin of each constituent.

AMS received numerous comments on this issue stating that to require labeling in the order of predominance by weight and for each individual constituent would be cumbersome, impractical, and costly.

In response to these comments, under this proposed rule, the country of origin declaration of blended or mixed retail food items comprised of the same covered commodity (e.g., bag of lettuce or package of ground beef) that are prepared from raw material sources having different origins must list alphabetically the countries of origin for all of the raw materials contained therein. For example, a bag of red and green leaf lettuce from country A and country B would be labeled as "Product of country A, Product of country B." However, under this proposed rule, items such as a salad mix or a fruit cup would not be required to bear a country of origin declaration because these items would be considered processed food items and would be excluded from these regulations.

Method of Notification

The law states that the country of origin declaration may be provided to consumers by means of a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers.

Under this proposed rule, market participants can utilize a variety of different labeling nomenclatures to denote the country of origin of a covered commodity. For example, "U.K." and "United Kingdom of Great Britain and Northern Ireland" would both be allowed under this proposed rule.

AMS received numerous comments requesting acceptance for labels containing only the name of the country such as "USA" due to the limited amount of space on many retail items. Therefore, under this proposed rule, country of origin declarations may be in the form of a statement such as "Product of USA," "Grown in Mexico," or they may only contain the name of the country such as "USA" or "Mexico"

provided it is in conformance with other existing Federal laws. However, the labeling requirements under this proposed rule do not supercede any existing labeling requirements, unless otherwise specified, and any such country of origin notification must not obscure other labeling information required by existing regulatory requirements.

For those entities that are regulated by FSIS, all country of origin labels must be submitted to FSIS for pre-approval as required by current FSIS regulations.

In order to provide the industry with as much flexibility as possible, this proposed rule does not contain specific requirements as to the exact placement or size of the country of origin declaration. However, such declaration must be conspicuous and allow consumers to determine the country of origin when making their purchases and provided that existing Federal labeling requirements must be followed.

State and Regional Labeling Programs

The law requires retailers to notify consumers of the country of origin of covered commodities. Therefore, State and regional labeling programs such as "Washington apples," "Idaho potatoes," and "California Grown" do not meet this requirement and cannot be accepted in lieu of country of origin labeling.

Existing State-Level Country of Origin Labeling Laws

Several States have implemented mandatory programs for country of origin labeling of certain commodities. For example, Alabama, Arkansas, Mississippi, and Louisiana have origin labeling requirements for certain seafood products. Other States including Wyoming, Idaho, North Dakota, South Dakota, Louisiana, Kansas, and Mississippi have origin labeling requirements for particular meat products. In addition, the State of Florida and the State of Maine have origin labeling requirements for fresh produce items.

AMS received several comments asserting that these State programs, particularly the State of Florida's program, should serve as models for the Federal mandatory COOL program. AMS has reviewed these existing programs and concluded that most of these programs do not meet the requirements of the Act. Accordingly, AMS has determined that, in general, these programs are not suitable models on which to base the regulations for the Federal mandatory COOL program.

With regard to enforcement activities, while some of these States actively enforce their respective origin labeling

laws and impose fines on those found to be in violation and/or seize product found to be mislabeled, other States conduct no such enforcement activities. With respect to the Florida law that is actively enforced by the State, verification of a product's origin generally consists of the inspector observing the primary container the product was packaged in to determine if the retailer has accurately characterized the origin of the product on the shelf. This enforcement program is based on a presumption of truthfulness that allows the retailer to rely on the information printed either on the shipping container or on the product itself. Therefore, AMS does not believe this type of enforcement program could serve as a model for enforcement of the Federal program.

Remotely Purchased Products

Many consumers are now purchasing products from retailers prior to having an opportunity to observe the final package (e.g., Internet sales, home delivery sales, etc.). In the voluntary guidelines (67 FR 63367), AMS stated its belief that consumers should be made aware of the country of origin of a covered commodity before the purchase is made. Thus, under the voluntary guidelines retailers were required to provide the country of origin information on the sales vehicle (i.e., Internet site, home delivery catalog, etc.) as part of the information describing the covered commodity for sale.

Numerous commenters stated that it would be nearly impossible and extremely impractical to have current country of origin information on an Internet site or catalog as this information changes rapidly depending on the store location or warehouse at which an order is processed and filled. Therefore, under this proposed rule, retailers must provide notification of country of origin at the time the product is delivered to the customer.

Recordkeeping Requirements

The law states that the Secretary may require any person that prepares, stores, handles, or distributes a covered commodity for retail sale to maintain a verifiable recordkeeping audit trail that will permit the Secretary to verify compliance. As such, records and other documentary evidence to substantiate origin declarations and, if applicable, designations of wild or farm-raised, are necessary in order to provide retailers with credible information on which to base origin declarations.

Under this proposed rule, any person engaged in the business of supplying a covered commodity to a retailer,

whether directly or indirectly (i.e., distributors, handlers, etc.), would be required to maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction, for a period of 2 years from the date of the transaction. The supplier of a covered commodity that is responsible for initiating a country of origin declaration and, if applicable, designation of wild or farm-raised, must possess or have legal access to records that substantiate that claim. For an imported covered commodity, the importer of record as determined by CBP, must ensure that records: (1) Provide clear product tracking from the U.S. port of entry to the immediate subsequent recipient, and (2) substantiate country of origin claims, and, if applicable, designations of wild or farm-raised and maintain such records for a period of 2 years from the date of the transaction. To the extent that existing records contain the necessary information to substantiate an origin declaration and, if applicable, designations of wild or farm-raised, it is not necessary to create or maintain additional records.

AMS invites comment on all aspects of recordkeeping requirements. In particular, comment is invited on whether a shorter record retention requirement would still afford adequate time to conduct compliance activities. For example, FDA proposed a 1-year record retention requirement for perishable goods in their proposed rule, published on May 9, 2003, implementing sections of the Bioterrorism Act of 2002, and many firms would have to retain records for both this rulemaking and the FDA recordkeeping rule. At the same time, retailers and others in the marketing chain subject to PACA must continue to comply with its 2 year record retention requirement.

For suppliers that handle similar covered commodities from more than one country, the supplier must be able to document that the origin of a product was separately tracked, while in their control, during any production or packaging processes to demonstrate that the identity of the product was maintained.

Under this proposed rule, retailers also have recordkeeping responsibilities. AMS received numerous comments requesting clarification of the types of records that must be kept at the retail level. Many of these commenters also suggested that a 2-year requirement for maintaining records at the store level was too

onerous and unnecessary given the relatively short amount of time a product is on the shelf before it is sold. Therefore, under this proposed rule, records and other documentary evidence relied upon at the point of sale by the retailer to establish a product's country of origin and, if applicable, designation of wild or farm-raised, must be maintained at the point of sale or otherwise be reasonably available to any duly authorized representatives of USDA for at least 7 days following the retail sale of the product. Records that identify the retail supplier, the product unique to that transaction, and the country of origin information, and, if applicable, designation of wild or farm-raised, must be maintained for a period of 2 years from the date the origin declaration is made at retail. Such records may be located at the retailer's point of distribution, warehouse, central offices, or other off-site location.

AMS invites comment on all aspects of recordkeeping requirements. In particular, comment is invited on whether a shorter record retention requirement would still afford adequate time to conduct compliance activities. For example, FDA proposed a 1-year record retention requirement for perishable goods in their proposed rule, published on May 9, 2003, implementing sections of the Bioterrorism Act of 2002, and many firms would have to retain records for both this rulemaking and the FDA recordkeeping rule. At the same time, retailers and others in the marketing chain subject to PACA must continue to comply with its 2 year record retention requirement.

AMS also received numerous comments from retailers emphasizing the need to hold retail suppliers accountable as the retailer would be unable to determine a product's country of origin in the absence of credible information from the supplier. Under the statute, suppliers of covered commodities are required to supply country of origin information to retailers and sanctions may be assessed against retailers only for willful violations.

However, to help address the concerns of retailers, AMS invites further comment on the practicality of requiring suppliers to provide an affidavit for each transaction to the immediate subsequent recipient certifying that the country of origin claims and, if applicable, designations of wild or farm-raised, being made are truthful and that the required records are being maintained.

Enforcement

The law encourages the Secretary to enter into partnerships with States to the extent practicable to assist in the administration of this program. As such, USDA will seek to enter into partnerships with States that have enforcement infrastructure to conduct retail compliance reviews.

Routine compliance reviews may be conducted at retail establishments and associated administrative offices, and suppliers subject to these regulations. USDA would coordinate the scheduling and determine the procedures for reviews. Only USDA will be able to initiate enforcement actions against a person found to be in violation of the law. USDA may also conduct investigations of complaints made by any person alleging violations of these regulations when the Secretary determines that reasonable grounds for such investigation exist.

Retailers, upon being notified of the commencement of a compliance review, must make all records or other documentary evidence material to this review available to USDA representatives and provide any necessary facilities for such inspections.

AMS invites further comment on all aspects of enforcement of this retail labeling rule. Specific comment is requested on the implications of the statutory mandate for retail labeling beginning September 30, 2004, relative to the amount of lead time necessary for firms in the supply chain to comply with this rule.

Violations

The law contains enforcement provisions for both retailers and suppliers that include civil penalties of up to \$10,000 for each violation. For retailers, the law states that if the Secretary determines that a retailer is in violation of the Act, the Secretary must notify the retailer of the determination and provide the retailer with a 30-day period during which the retailer may take necessary steps to comply. If upon completion of the 30-day period the Secretary determines the retailer has willfully violated the Act, after providing notice and an opportunity for a hearing, the retailer may be fined not more than \$10,000 for each violation.

AMS received numerous comments requesting a clarification as to how AMS will apply the standard of willfulness. These commenters urge USDA to recognize that if a majority of covered commodity items bear a label indicating the product's country of origin, the retailer has met their obligation under these regulations. AMS recognizes that

many suppliers, particularly in the case of produce, will apply stickers to individual covered commodities indicating the country of origin and that such labeling technology does not result in a 100 percent adhesion level. AMS also recognizes that consumers may separate hands of bananas that may only have one or two stickers per hand or otherwise move an item from one bin to another as they make their selections. AMS will take these and all other circumstances into account in determining whether or not a retailer has committed a willful violation.

In addition to the enforcement provisions contained in the Act, statements regarding a product's origin must also comply with other existing Federal statutes. For example, if a firm misrepresents the State, country, or region of origin of a perishable agricultural commodity, the firm is in violation of PACA. In addition, both FMIA and the Federal Food, Drug, and Cosmetic Act prohibit labeling that is false or misleading. Thus, inaccurate country of origin labeling of covered commodities may lead to additional penalties under these statutes as well.

Executive Order 12988

The contents of this proposed rule were reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. States and local jurisdictions are preempted from creating or operating country of origin labeling programs for the commodities specified in the Act and these regulations. With regard to other Federal statutes, all labeling claims made in conjunction with this regulation must be consistent with other applicable Federal requirements. Further, the Act does not restrict or modify the authority of the Secretary to administer or enforce FMIA (21 U.S.C. 601 *et seq.*) or PACA (7 U.S.C. 499 *et seq.*). There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities that are subject to these regulations. This proposed rule does not require affected entities to

relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this proposed rule would not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence to conclude that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. This proposed rule is required by the Farm Bill. While this statute does not contain an express preemption provision, it is clear from the language in the statute that Congress intended preemption of State law.

Several States have implemented mandatory programs for country of origin labeling of certain commodities. For example, Alabama, Arkansas, Mississippi, and Louisiana have origin labeling requirements for certain seafood products. Other States including Wyoming, Idaho, North Dakota, South Dakota, Louisiana, Kansas, and Mississippi have origin labeling requirements for certain meat products. In addition, the State of Florida and the State of Maine have origin labeling requirements for fresh produce items.

To the extent that these State country of origin labeling programs encompass commodities which are not governed by this regulation, the States may continue to operate them. With regard to consultation with States, as directed by the law, AMS has consulted with the States that have country of origin labeling programs. Further, State officials were invited to attend, and in many cases did participate in, the 12 educational and listening sessions AMS held across the United States. Further, States are expressly invited to comment on this proposed rule as it relates to existing State programs.

Executive Order 12866

USDA has examined the economic impact of this proposed rule as required by Executive Order 12866. USDA has determined that this regulatory action is economically significant, as it is likely to result in a rule that would have an annual effect on the economy of \$100 million or more and therefore has been reviewed by OMB. Executive Order

12866 requires that a regulatory cost-benefit assessment be performed on all economically significant regulatory actions. In accordance with Executive Order 12866, this preliminary economic impact assessment contains a statement of need for the proposed rule, an examination of alternative approaches, and an analysis of benefits and costs.

Summary of the Economic Analysis

The estimated benefits associated with this rule are likely to be negligible. The estimated first-year incremental cost for growers, producers, processors, wholesalers, and retailers ranges from \$582 million to \$3.9 billion. The estimated cost to the U.S. economy in higher food prices and reduced food production in the tenth year after implementation of the rule ranges from \$138 million to \$596 million.

Note that this analysis does not quantify certain costs of the proposed rule such as the cost of the rule after the first year, or the cost of any supply disruptions or any other "lead-time" issues. Except for the recordkeeping requirements, there is insufficient information to distinguish between first year start up and maintenance costs versus ongoing maintenance costs for this proposed rule. Maintenance costs beyond the first year are expected to be lower than the combined start up and maintenance costs required in the first year. AMS invites further comment on start up costs and maintenance costs for the first year and beyond for firms directly affected by this proposed rule.

USDA finds little evidence that consumers are willing to pay a price premium for country of origin labeling. USDA also finds little evidence that consumers are likely to increase their purchase of food items bearing the U.S. origin label as a result of this rulemaking. Current evidence does not suggest that U.S. producers will receive sufficiently higher prices for U.S.-labeled products to cover the labeling, recordkeeping, and other related costs. The lack of participation in voluntary programs for labeling products of U.S. origin provides evidence that consumers do not have a strong preference for country of origin.

Statement of Need

This proposed rule is the direct result of statutory obligations to implement the COOL provisions of the Farm Bill, which amended the Act by adding Subtitle D—Country of Origin Labeling. There are no alternatives to Federal regulatory intervention for implementing this statutory directive.

The country of origin labeling provisions of the Farm Bill change

current Federal labeling requirements for muscle cuts of beef, pork, and lamb; ground beef, ground pork, and ground lamb; farm-raised fish; wild fish; perishable agricultural commodities; and peanuts (hereafter, covered commodities). Under current Federal laws and regulations, country of origin labeling is not universally required for covered commodities. In particular, labeling of U.S. origin is not mandatory, and labeling of imported products at the consumer level is required only in certain circumstances.

The Tariff Act, FMIA, and other legislation require most imports to bear labels informing the "ultimate purchaser" of the country of origin. "Ultimate purchaser" is defined as the last U.S. person who will receive the article in the form in which it was imported. The Tariff Act requires country of origin declarations on containers (e.g., cartons and boxes) holding imported fresh fruits and vegetables when entering the United States. Under the provisions of this statute, loose produce in a labeled container can be displayed and sold in an open bin at retail outlets without country of origin labels on each individual piece of produce. A placard or other bin label indicating country of origin is not required. If the produce in a shipping container is packed in consumer-ready packaging, however, those packages must bear a country of origin declaration. For example, grapes packaged in bags or shrink-wrapped English cucumbers must have country of origin labels on each consumer-ready package. Further, if the food item is destined for a U.S. processor or manufacturer where it will undergo "substantial transformation," that processor or manufacturer is considered the ultimate purchaser. As a result, under the Tariff Act, these covered commodities are not required to carry a country of origin mark after processing in the United States.

The strongest case for establishing a market failure justification for mandatory COOL is inadequate or asymmetric information. Country of origin is clearly a credence attribute, which means that consumers cannot observe the attribute before or after purchasing the product. Without labeling, there is no way for consumers to know the country of origin of a covered commodity. If the country of origin of the commodities covered by this proposed rule is an attribute desired by consumers and there is market failure that impedes the voluntary provision of this information, then market efficiency could be improved by providing credible information to

consumers. With credible country of origin information, consumers could select products based on their preferences for country of origin, and the food industry could respond to consumer demand signals by providing products according to the expressed demands of consumers.

Consumer surveys indicate that some consumers desire country of origin information on foods (Refs. 1, 2, and 3). The consumer surveys also indicate that consumers may desire COOL not out of any intrinsic value they place knowing the country of origin, but because it represents to them a proxy for product safety or quality, serves as an indicator of desirable environmental or labor practices, or represents a means for them to support U.S. or another country's producers.

An important question to consider in weighing the economic basis for mandatory COOL is whether there are any barriers to the voluntary, private provision of the optimal level of country of origin information. Private costs incurred by firms in the supply chain represent the primary barrier to the voluntary provision of country of origin information. There are no significant regulatory barriers to the voluntary provision of this information.

For the market to voluntarily provide credible country of origin declarations, information regarding country of origin must flow between firms involved in all stages of the food supply chain. Just as it is for consumers, country of origin information is a credence attribute for firms in the food supply chain. Firms must incur costs to provide credible country of origin information. If the increase in price firms in the supply chain expect to receive for providing consumers with country of origin information is less than the cost of providing it, then firms will not voluntarily incur the costs of providing this information.

If there were profits to be made from country of origin labeling, there would be strong incentives for firms to advertise and market country of origin labeled foods. Firms in the food supply chain would not be expected to forgo opportunities for additional profits. Retailers would demand that food manufacturers supply them with products having verifiable origin information. If consumers favored product by origin, food manufacturers would demand food commodities specifying origin and verifiable origin information.

U.S. farmers and fish harvesters could benefit financially from country of origin labels if consumers prefer domestic products to imports. In this

case labels would allow consumers to distinguish between imports and domestic products and make their choices accordingly. As a result, demand for domestic food products in the United States would rise along with domestic food prices. Further, domestic products would increase their market share relative to imports. However, if consumers do not generally prefer domestic products, labeling would confer little to no economic benefits to domestic producers.

Overall, there does not appear to be a compelling market failure argument regarding the provision of country of origin information. There appear to be no barriers to the provision of this information other than private costs to firms in the supply chain and low expected returns. Firms that would incur private costs to provide country of origin information would also enjoy the private benefits, if any, from consumer demand for the information. Thus, from the point of view of society, market mechanisms would ensure that the optimal level of country of origin information would be provided.

Alternative Approaches

Many aspects of the mandatory COOL provisions of Pub. L. 107-171 are prescriptive and provide little regulatory discretion for this proposed rulemaking. The law requires a statutorily defined set of food retailers to label covered commodities regarding their country of origin. The law also prohibits USDA from using a mandatory identification system to verify the country of origin of covered commodities. In its guidance for conducting analyses of regulatory benefits and costs, OMB suggests several categories of alternative approaches that agencies should consider during their analysis. Applicable categories of alternative approaches for this proposed rule are discussed below.

Different requirements for different segments of the regulated population: The mandatory COOL law explicitly defines the retailers required to provide country of origin labeling for covered commodities (namely, retailers as defined by PACA). Thus, there is no discretionary authority for designating which retailers are subject to the COOL labeling requirements. The law also requires that any person supplying a covered commodity to a retailer provide information to the retailer indicating the country of origin of the covered commodity. Again, the law provides no discretionary authority to this requirement.

Neither the law nor the proposed rule requires that any entity that produces or

supplies covered commodities must market those commodities to retailers as defined by the law. Suppliers of covered commodities could completely avoid the requirements of this proposed rule by distributing their products through channels other than to the retailers subject to the law. Examples include retailers not subject to the law, foodservice firms, or exports.

The proposed rule does not require specific types of recordkeeping systems. Thus, retailers and suppliers of covered commodities will be able to develop their own least-cost systems to implement COOL requirements. For example, one firm may depend primarily on manual identification and paper recordkeeping systems, while another may adopt automated identification and electronic recordkeeping systems.

Alternative levels of stringency: USDA interprets the law as providing essentially no discretionary authority for providing alternative levels of stringency regarding the provision of country of origin information for covered commodities by retailers as defined by the statute. That is, retailers either provide the required country of origin information to their customers or they do not, which provides no scope for alternative levels of stringency. There is, however, some degree of discretionary authority with regard to how the required information may be substantiated and how USDA may enforce the law and ensure compliance with this proposed rule.

USDA received numerous comments suggesting self-certification as a means to identify country of origin, particularly for producers. USDA does not consider self-certification alone, absent records to substantiate the information, as a viable or credible alternative for compliance with this proposed rule. In addition, with no mechanism to verify compliance, such a system could be highly vulnerable to misrepresentation. USDA believes that some type of certification could be used as a means to transfer country of origin information from one level of the supply chain to the next, but such certification would need to be supported by adequate documentation to verify country of origin claims.

An alternative to the proposed recordkeeping requirements would be to supplement the recordkeeping requirements with required affidavits attesting to the veracity of country of origin claims. Suppliers could be required to provide an affidavit for each transaction to the immediate subsequent recipient certifying that the country of origin claims and, if applicable,

designations of wild or farm-raised, being made are truthful and that the required records are being maintained. This system of providing affidavits could provide enhanced assurance that each participant in the supply chain is fully accountable for providing valid country of origin claims.

Alternative effective dates of compliance: The law states that country of origin labeling shall apply to the retail sale of a covered commodity beginning September 30, 2004. USDA interprets this requirement as providing no discretionary authority for alternative effective dates of compliance.

Alternative methods of ensuring compliance: Country of origin labeling is, by its very nature, an information-based activity. Thus, USDA believes that there are essentially no alternatives for verifying compliance other than through the use of an audit-based system to review the information which is both generated to substantiate country of origin claims and passed along the supply chain. USDA is precluded by law from implementing any mandatory system that might be used to verify country of origin information.

In terms of compliance activities, the law states that USDA shall, to the maximum extent practicable, enter into partnerships with States having enforcement infrastructure to assist in the administration of the law. USDA will seek to enter into such partnerships with States where possible to conduct compliance activities at retail establishments. Because suppliers of covered commodities are often located outside of a particular State's boundaries and jurisdictions, USDA concludes that it would be most practicable for States to focus their enforcement activities on entities in the supply chain within their boundaries.

Informational measures: Providing information to consumers is the intent of this proposed rule and is the chosen regulatory alternative.

More market-oriented approaches: There is no regulatory alternative to implementation of mandatory COOL by the statutorily specified retailers. The proposed rule, however, provides flexibility in allowing market participants to decide how best to implement mandatory COOL in their operations.

Considering specific statutory requirements: Within the parameters established by the legislation, one area which allows for regulatory discretion relates to the definition of an ingredient in a processed food item. The legislation provides that the term "covered commodity" does not include an item

“if the item is an ingredient in a processed food item.” The legislation does not, however, define a processed food item, nor what constitutes an ingredient in a processed food item. Therefore, alternative definitions of a processed food item are possible. The scope of commodities, or number of items, covered by the proposed rule changes under alternative definitions of a processed food item.

Analysis of Benefits and Costs

The baseline for this analysis is the present state of the affected industries absent mandatory COOL. USDA recognizes that some directly affected firms have already begun to implement changes in their operations to accommodate the law and the expected requirements of this proposed rule. The benefits and costs examined in the analysis represent incremental impacts relative to their state prior to any changes resulting from the mandatory COOL statute or this proposed rule. If consumers would pay extra for the certainty that their food was produced in a particular country, and if labeling is relatively inexpensive, there is an economic incentive to make consumers aware of this product characteristic. Retailers, food manufacturers, and producers would share the increased net revenues and have an incentive to voluntarily label. Given that retailers and food manufacturers have the greatest incentive to be informed about what consumers desire, the fact that they do not currently provide country of origin information to consumers on a widespread basis suggests that they believe that the costs of labeling outweigh the returns.

Some analysts argue that country of origin information does not matter to U.S. consumers (See, for example, Ref. 4). Freshness, quality, price, and other factors may be more important to consumers than country of origin. If country of origin does not influence demand, there is no incentive to provide country of origin labels. Retailers or food manufacturers providing country of origin labels would incur labeling costs (including the cost of segregating domestic and imported products) but receive no corresponding benefits. Even if consumers do favor labeled products over unlabeled products, labeling costs may outweigh the increase in market returns from increased demand and prices.

In any event, economic efficiency of mandatory COOL will be maximized by implementing the program so that it reduces the cost of providing this information as much as possible.

Benefits: The expected benefits from implementation of this rule are difficult to quantify. However, we believe that the benefits will be small and will accrue mainly to those consumers who desire country of origin information. We find little evidence to support the notion that consumers' stated preferences for country of origin labeling will lead to increased demands for covered commodities bearing the U.S.-origin label.

There is considerable research indicating that a majority of consumers have at least some interest in their food's origin, and a smaller but significant proportion of consumers that have a strong desire to know where their food was produced. However, this research indicates that consumer desire for country of origin labeling stems primarily from their concerns about the safety of the food they eat. To a lesser extent, this research indicates that consumer desire for country of origin labeling stems from concerns about the quality and freshness of products and a preference to support U.S. producers.

There is less research on how much consumers would pay to know the origin of the food they eat. Some recently conducted surveys, however, report that 71 percent to 73 percent of consumers are willing to pay more to know the origin of their food (Refs. 1 and 2). Measures of willingness to pay, however, do not necessarily translate directly into measures of what consumers would actually pay when faced with marketplace decisions.

One frequently cited study, Umberger, *et al.* (Ref. 2) assessed consumers' willingness to pay for labeled beef of U.S. origin. They found that 73 percent of survey participants in Denver, Colorado, and Chicago, Illinois, were willing to pay premiums of 11 percent or more for steak and 24 percent or more for ground beef when labeled as beef of U.S.-origin. These findings have been cited by others as an indicator of the potential benefits that would accrue from country of origin labeling.

For example, using the average amounts that consumers were willing to pay for U.S.-labeled beef from the Umberger, *et al.* study, VanSickle, *et al.* (Ref. 5) estimated that benefits to consumers for country of origin labeling of fresh beef muscle cuts and ground beef would equal \$5.8 billion per year based on recent per-capita consumption figures and price data for January and February 2003. We believe, however, that this estimate is based on an inappropriate use of the results from the Umberger, *et al.* study.

There are several limitations with the willingness-to-pay studies that call into

question the appropriateness of using this approach to make determinations about the benefits of this proposed rule. First, consumers in such studies often overstate their willingness to pay for a product. This typically happens because survey participants are not constrained by their normal household budgets when they are deciding which product or product feature they most value. In the case of the Umberger, *et al.* study, consumers ranked the importance of country of origin information 8th out of 17 factors, with food safety and freshness receiving the highest rankings. This suggests that, when faced with a real budget constraint, consumers might actually be willing to pay considerably less for the country of origin information than they indicate when surveyed.

Second, in most of these willingness-to-pay studies, consumers are not faced with the actual choices they would face at retail outlets. For example, consumers in the Umberger, *et al.* study were only faced with making a hypothetical choice between U.S. beef and generic beef. Under the proposed rule, however, they may be faced with choosing between U.S. beef, beef from several other specific countries, and beef from a mixture of countries including the United States. In addition, the labels they see in the store will contain information about price and quality that may also affect the value they place on country of origin information. Visual characteristics and presentation of products in the store would also influence choice in addition to label information.

Third, consumers' willingness-to-pay as elicited from a survey is a function of the questions asked. Different questionnaires will yield different results. For example, if consumers were told that nearly all of the beef they currently consume came from the United States before they were asked about their willingness to pay for U.S.-labeled beef, the strength of their preference for origin information would probably be less than if consumers were not told about the correct origin of the beef they consume.

Finally, the results reported from these studies do not take into account changes in consumers' preferences for a particular product or product attribute over time. While consumers may be willing to pay more for a given attribute initially, as time goes on and they gain more experience with the product attribute, they may be less willing to pay for products with this attribute.

The authors of the Umberger, *et al.* study acknowledge many of these limitations (Ref. 6). They state that the

results obtained from these types of surveys do not always predict consumer behavior. They also state that because of the limitations inherent in willingness-to-pay studies, the results of their study should not be used to determine the economic impact of COOL.

This is not to say that willingness-to-pay studies, such as the study conducted by Umberger, *et al.*, are not useful. They are valuable for improving our understanding of consumer preferences for product characteristics. The results of these studies support the notion that at least some consumers desire this information and are willing to pay some amount for it.

With respect to agricultural producer benefits, even if consumers are willing to pay more for U.S.-labeled products, this does not necessarily mean that U.S. producers would benefit from an increase in the demand for their products. U.S. producers will only benefit if the country of origin labeling increases demand and ultimately the farm price enough to cover producers' costs of labeling itself. Current evidence on country of origin labeling, however, does not suggest that U.S. producers will receive sufficiently higher farm prices for U.S.-labeled products to cover the costs of labeling. Moreover, it is even possible that producers could face lower farm prices as a result of labeling costs being passed back from retailers and processors.

For the past 3 years, FSIS and AMS have offered a voluntary program by which suppliers can place U.S.-origin declarations (certified to be accurate by USDA) on many of the meat products covered by this rule. However, no suppliers of these covered commodities have participated in this program.

The lack of participation in government-provided programs for labeling products of U.S. origin provides evidence that consumers do not have a strong preference for country of origin labeling. At the very least it indicates that retailers and food manufacturers do not believe consumer preferences for country of origin information are strong enough to cause demand and prices for labeled products to increase sufficiently to pay for the costs of implementing a labeling program.

We can see what happens when consumers do have a strong desire for labeling by contrasting the lack of participation in the U.S.-origin labeling programs to the high level of participation in the organic labeling program. Labeling provided under the organic program provides compelling evidence that processors and retailers will provide consumers with the information they desire when they

believe that consumers have a strong preference for this information and are willing to pay for it.

Some may point to the fact that many of the commodities covered by this rule are already labeled as to country of origin as proof that consumers do desire this information. The existence of country of origin information by itself, however, does not indicate that consumers place any value on this information. For many covered commodities, the cost of identifying country of origin is minimal, and producers and processors face little added expense in differentiating their product from others by country of origin.

The primary indication of the strength of consumer preference for country of origin information would be whether processors and retailers were able to extract a price premium for promoting this information. While many products sold by retailers have country of origin labels, there appear to be far fewer of these products that retailers attempt to sell based on this information. Even when they do, there is little evidence that they are able to extract a premium for country of origin information.

The results from consumer surveys provide additional evidence that country of origin labeling may not lead to higher demand and prices for U.S.-labeled products. The results from these surveys indicate that the number of consumers with strong preferences for U.S.-origin labeled products is not sufficient for U.S. producers to benefit from labeling. This occurs because the supply of U.S.-origin products is likely to exceed the total quantity demanded by those who would pay a higher price for U.S. origin products (*see, for example, Ref. 7*).

While consumers often state a preference for country of origin information, they also indicate that they desire this information because they believe it provides them with important information about the safety of their food. This suggests that consumers may use country of origin labeling as a proxy for food safety information.

Country of origin labeling, as formulated under the proposed rule, does not provide valid information regarding food safety. This is because the proposed rule does not provide the traceability required to permit the government to rapidly respond to a contamination or disease outbreak.

Furthermore, the country of origin information provided under this rule could cause some consumers to incorrectly attribute greater risks to products from a specific country than is justified. If this sentiment causes

enough consumers to avoid this product and consequently pay a higher price for a competing country's product, the result would lead to a decline in consumer welfare.

Costs: To estimate the costs of this proposed rule, USDA employed a two-pronged approach. First, USDA estimated implementation costs for firms in the industries directly affected by the proposed rule. The implementation costs on directly affected firms represent increases in capital, labor, and other input costs that firms will incur to comply with the requirements of the proposed rule. These costs are expenses that these particular firms must incur, but are not necessarily costs to the U.S. economy as measured by the value of goods and services that are produced. USDA then applied the implementation cost estimates to a general equilibrium model to estimate overall impacts on the U.S. economy after a 10-year period of economic adjustment. The model provides a means to estimate the change in overall consumer purchasing power after the economy has adjusted to the requirements of the proposed rule.

To develop its estimates of implementation costs, USDA drew upon available studies, comments and testimony received on the voluntary COOL guidelines and this rulemaking, and its knowledge of the affected industries. USDA developed a range of estimated implementation costs to reflect the likely range of first-year costs for directly affected firms. At a minimum, all directly affected firms will need to comply with the recordkeeping requirements of the proposed rule. Thus, the lower range of incremental cost estimates reflect the costs to modify and maintain current recordkeeping systems. USDA believes, however, that firms will incur other capital and operational costs to comply with the proposed rule. For example, firms may need to modify their production, storage, distribution, and handling systems to enable country of origin information to be tracked and maintained from start to finish. Thus, the upper range of incremental cost estimates reflect not only additional recordkeeping costs, but also additional payments by the directly affected firms for capital, labor, and other expenses that will be incurred as a result of operational changes to comply with the proposed rule.

Estimated first-year incremental costs for directly affected firms range from \$582 million to \$3.9 billion. Estimated costs per firm range from \$180 to \$443 for producers, \$4,048 to \$50,086 for intermediaries (such as handlers,

importers, processors, and wholesalers), and \$49,581 to \$396,089 for retailers. Although the estimated incremental costs represent additional payments individual firms will incur to comply with the proposed rule, the sum of such payments does not represent the overall impacts of the proposed rule on the entire U.S. economy.

In effect, these incremental costs represent increases in the costs of production for the affected firms. Firms will need to recover these costs to stay in business in the long run. To do this, firms will either pass the higher costs back to their suppliers by paying lower prices for inputs or pass the higher costs forward to their customers by charging higher prices for outputs. The directly affected industries as well as other, indirectly affected sectors of the economy will thus adjust over the longer run to the higher costs imposed by the proposed rule.

To estimate the overall impacts of the higher costs of production resulting from the proposed rule, USDA used a model of the entire U.S. economy. USDA adjusted the model by imposing the estimated implementation costs on the directly impacted segments of the economy in a computable general equilibrium model developed by the USDA's Economic Research Service (ERS). The model estimates changes in prices, production, exports, and imports as the directly impacted industries adjust to higher costs of production over the longer run (namely, 10 years). Because the model covers the whole U.S. economy, it also estimates how other segments of the economy adjust to changes emanating from the directly affected segments and the resulting change in overall productivity of the economy.

Annual costs to the U.S. economy in terms of reduced purchasing power resulting from a loss in productivity after a 10-year period of adjustment are estimated to range from \$138 million to \$596 million. Domestic production for all of the covered commodities at the producer and retail levels is estimated to be lower and prices to be higher. In percentage terms, however, the production declines are larger than the price increases, so estimated industry revenue declines for all of the covered commodities. In addition, U.S. exports are estimated to decrease for all covered commodities, and U.S. imports also are estimated to decrease for all covered commodities except fish, which shows no change to a slight increase.

It may appear counterintuitive to have first-year incremental costs ranging from \$582 million to \$3.9 billion for directly

impacted firms, but smaller overall costs ranging from \$138 million to \$596 million in reduced consumers' purchasing power after 10 years of adjustment. Nonetheless, these results are consistent with each other.

Directly affected firms incur additional costs to implement the requirements of the proposed rule, which take the form of additional payments for capital, labor, and other operating expenses. For the most part, however, such additional expenses for directly affected firms ultimately return to the economy. For example, additional human resource costs incurred to develop and maintain recordkeeping systems, segregate and display product properly, and so forth are also wages that will be spent on food, transportation, housing, and other goods and services in the economy. Likewise, capital costs for warehouse reconfiguration or changes in processing plants involve equipment and supplies purchased from firms that pay wages, purchase raw materials, and supply goods and services. Thus, the implementation costs incurred by directly affected firms are not entirely lost to the economy, but these incremental costs do increase the costs of production and decrease the productivity of the affected industries.

The findings indicate that directly affected industries recover the higher costs imposed by the proposed rule through slightly higher prices for their products. With higher prices, the quantities of their products demanded also decline to the extent that total industry revenues also decline. Consumers pay slightly more for the products and purchase less of the covered commodities. Overall, however, the covered commodities account for a comparatively small portion of the U.S. economy and of consumers' budgets. Thus, the "deadweight" economic burden of the proposed rule is considerably smaller than the incremental costs to directly affected firms. The remainder of this section describes in greater detail how USDA developed the estimated direct, incremental costs and the overall costs to the U.S. economy.

Cost assumptions: The industries directly affected by this proposed rule are those responsible for producing and marketing the covered commodities at retail stores as defined by the law. Consumers of the covered commodities at these retail outlets are also directly affected by this proposed rule.

This proposed rule directly regulates the activities of retailers (as defined by the law) and their suppliers. Retailers

are required by the proposed rule to provide country of origin information for the covered commodities that they sell, and firms that supply covered commodities to these retailers must provide them with this information. In addition, all other firms in the supply chain for the covered commodities are potentially affected by the proposed rule because country of origin information will need to be maintained and transferred along the entire supply chain to enable retailers to correctly label the products at the point of final sale.

In general, the supply chains for the covered commodities consist of farm or fishing operations, processors, wholesalers, and retailers. Table 1 contains a listing of the number of entities in the supply chains for each of the covered commodities.

The total cost of this proposed rule will depend on the number of entities affected and the incremental cost to each affected firm in the supply chain for the covered commodities. The proposed rule requires that retailers provide consumers with country of origin information for the covered commodities and also requires that their suppliers provide them with the information needed to substantiate these country of origin claims. To provide credible country of origin claims, firms in the supply chain will need to create, maintain, and transfer information from one level of the chain to the next. The proposed rule allows industry participants to determine the recordkeeping and information transfer mechanisms needed for compliance. Consequently, firms will modify existing recordkeeping systems and business practices as necessary to ensure compliance with the proposed rule.

Number of firms and number of establishments affected: USDA estimates that approximately 1,377,000 establishments owned by approximately 1,339,000 firms would be either directly or indirectly affected by this rule. In general, the supply chain for each of the covered commodities includes agricultural producers or fish harvesters, processors, wholesalers, and retailers. Imported products may be introduced at any level of the supply chain. Other intermediaries, such as auction markets, may be involved in transferring products from one stage of production to the next. Table 1 provides estimates of the affected firms and establishments.

TABLE 1.—ESTIMATED NUMBER OF AFFECTED ENTITIES

Type	Firms	Establishments
Beef, Lamb, and Pork:		
Cattle and Calves	1,032,670	1,032,670
Sheep and Lambs	64,170	64,170
Hogs and Pigs	67,150	67,150
Stockyards, Dealers & Market Agencies	7,775	7,775
Livestock Processing & Slaughtering	3,098	3,358
Meat & Meat Product Wholesale	3,185	3,305
Fish:		
Farm-Raised Fish and Shellfish	3,540	3,540
Fishing	76,499	76,452
Seafood Product Preparation & Packaging	741	823
Fish & Seafood Wholesale	2,897	2,980
Perishable Agricultural Commodities:		
Fruits & Vegetables	47,986	47,986
Frozen Fruit, Juice & Vegetable Mfg	163	257
Fresh Fruit & Vegetable Wholesale	9,026	12,879
Peanuts:		
Peanut Farming	12,221	12,221
Roasted Nuts & Peanut Butter Mfg	140	159
Peanut Wholesalers	83	83
General Line Grocery Wholesalers	3,183	3,993
Retailers	4,512	37,176
Totals:		
Producers	1,303,846	1,303,799
Intermediaries	30,291	35,612
Retailers	4,512	37,176
Grand Total	1,338,649	1,376,587

Supply chains for the covered commodities are mostly specialized from farm production through manufacturing levels. After manufacturing, the degree of specialization diminishes, until products reach retail outlets where most affected retailers sell many of the covered commodities. Even after manufacturing, however, there are specialized wholesalers who distribute the products to retail outlets. Firms and establishments that specialize in the production and distribution of each covered commodity are listed within each group. General-line wholesalers and retailers that handle several of the covered commodity groups are listed separately at the bottom of the table.

For all covered commodities, the numbers of manufacturing and wholesaling establishments are estimated from the 2001 County Business Patterns (Ref. 8) and the 2000 Statistics of U.S. Businesses (Ref. 9). An establishment is a single physical location where business is conducted or where services or industrial operations are performed. A firm is a business organization consisting of one or more domestic establishments in the same industry that was specified under common ownership or control. The firm and the establishment are the same for single-establishment firms. County

Business Patterns and Statistics of U.S. Businesses report data for companies with at least one paid employee.

Nonemployer Statistics are also reported by the U.S. Census Bureau (Ref. 10). Nonemployer Statistics reports data for companies with no paid employees, such as independent contractors. Because nonemployer businesses are generally very small, we assume that nonemployer manufacturing and wholesaling businesses do not supply commodities to retailers of the size covered by this proposed rule (*i.e.*, retailers selling fresh and frozen fruits and vegetables with an invoice value of at least \$230,000). Such small businesses likely are engaged in localized specialty operations that would not supply larger retailers. Therefore, nonemployer businesses are not included in the assessment of the firms and establishments impacted by the proposed rule. We invite comments on the validity of this assumption.

We assume that all firms and establishments identified in Table 1 will be impacted by the proposed rule, although some may not produce or sell products ultimately within the scope of the proposed rule. While this assumption likely overstates the number of affected firms and establishments, we believe that the assumption is reasonable. Detailed data on the number

of entities categorized by the marketing channels in which they operate and the specific products that they sell are not available.

Beef, lamb, and pork: USDA estimates that there are 1,032,670 operations with cattle and calves (Ref. 11), 64,170 operations with sheep and lambs (Ref. 12), and 67,150 operations with hogs and pigs (Ref. 13). For farming operations, the firm and the establishment are considered to be one and the same. We assume that all of these livestock production operations are affected by the proposed rule, even though we recognize that substantial portions of the covered commodities produced from the livestock of these operations will fall outside of the proposed rule. Covered commodities sold at foodservice establishments, exported, used as ingredients in processed food items, or sold at retail outlets not covered by the proposed rule are outside the scope of the proposed rule. When livestock are born, the producer typically does not know the ultimate destination for the final product. We assume that all producers will seek to keep their market options open, whether the final product moves to a covered retailer or to another marketing outlet. In addition, there are 7,775 posted stockyards, bonded dealers and market agencies that are involved in

buying, selling, and marketing livestock (Ref. 14). Some of these stockyards, dealers, and market agencies may deal exclusively with other species such as horses, but that number is small and expected to minimally impact the estimated number of firms and establishments.

We estimate that there are 3,358 livestock slaughtering and processing establishments and operated by 3,098 firms. These numbers may be slightly overstated, since businesses that do not slaughter or process cattle, sheep, or hogs are included in these totals. For example, a plant that slaughtered only bison would be included in the totals, but the number of such businesses is very small. Also, some plants that process beef, lamb, or pork may produce only processed products that are excluded from the scope of the proposed rule. The number of such firms and establishments is unknown, but expected to be small. The number of meat and meat product wholesale firms is estimated to be 3,185 and the number of establishments is estimated to be 3,305.

Fish. Fish production includes both farm-raised or aquaculture production and wild-caught fishing operations. Aquaculture operations include those producing food fish, crustaceans, and mollusks, and the estimated number of operations is 3,540 (Ref. 15). Most wild fish harvesting operations are nonemployer businesses. Census Bureau data are used to estimate the number of fishing, seafood product preparation and packaging, and fish and seafood wholesale establishments and firms (Refs. 8, 9, and 10). As with the beef, lamb, and pork firms and establishments, some of these fish and seafood firms and establishments may not produce or sell covered commodities. While the number of such entities is unknown, we assume that all firms and establishments will be impacted by the proposed rule.

Perishable agricultural commodities: Census of Agriculture data provide estimates of the number of fruit and vegetable farming operations (Ref. 16). The total number of fruit farms is estimated at 81,956 and the total number of vegetable farms at 31,030. USDA estimates that 34.6 percent of fruit production and 62.0 percent of vegetable production is used for fresh and frozen products. USDA assumes that fruit and vegetable producers generally know whether their production is destined for fresh or processing use, meaning that some producers will be unaffected by the proposed rule depending upon the marketing channels for which they

produce. Data on the number of farming operations categorized by the ultimate end uses of the products do not exist. Therefore, USDA assumes that the number of farms producing fruits and vegetables for fresh and frozen use is proportional to the production of fresh and frozen fruits and vegetables relative to total production. Hence, the number of affected fruit farms is estimated at 28,357 and the number of vegetable farms at 19,339, for a total of 47,696 farming operations producing fruits and vegetables that will be impacted by this proposed rule.

Businesses that process frozen fruits and vegetables and fresh fruit are estimated from Census Bureau data (Refs. 8, 9, and 10), and are estimated to include 163 firms operating 257 establishments. These estimates may be overstated by the inclusion of businesses that produce frozen juice and businesses that produce frozen fruits and vegetables in forms not covered by the proposed rule. Businesses wholesaling frozen fruits and vegetables are included in packaged frozen food wholesale firms and include 9,026 firms operating 12,878 establishments.

Peanuts: Census of Agriculture data provide an estimate of 12,221 peanut farming operations (Ref. 16). Businesses that roast nuts and manufacture peanut butter are estimated from Census Bureau data to include 140 firms operating 159 establishments (Refs. 8, 9, and 10). These numbers include companies that produce only peanut butter (not a covered commodity) or that may roast nuts not covered by the proposed rule, but the number of such operations is unknown. Businesses that wholesale peanuts are estimated from peanut marketing agreement data (Ref. 17) to include 83 firms and the same number of establishments.

General-line wholesalers and retailers: In addition to specialty wholesalers that primarily handle a single covered commodity, there are also general-line wholesalers that handle a wide range of products. We assume that these general-line wholesalers likely handle at least one and possibly all of the covered commodities. Therefore, we include the number of general-line wholesale businesses among entities affected by the proposed rule. This includes 3,183 firms operating 3,993 establishments.

Retailers covered by this proposed rule must meet the definition of a retailer as defined by PACA. The number of such businesses is estimated from PACA data (Ref. 18). The PACA definition includes only those retailers handling fresh and frozen fruits and vegetables with an invoice value of at

least \$230,000 annually. Therefore, the number of retailers impacted by this rule is considerably smaller than the total number of food retailers nationwide. Census Bureau data show that there were 92,383 food store firms and 102 warehouse club and superstore firms in 2000 (Ref. 9). There were 127,566 food store establishments and 2,051 warehouse club and superstore establishments in 2001 (Ref. 8). Thus, we estimate that there are 92,485 retail firms and 129,617 retail establishments that account for most of the retail sales of the covered commodities. However, only 4,512 retail firms operating 37,176 retail establishments are included under the statutory definition of a PACA retailer.

Source of cost estimates: Data on costs to implement mandatory COOL are largely unavailable. There are State programs for country of origin labeling of some products, CBP and regulations specify labeling requirements for imported products, and some companies choose to provide country of origin labels for marketing purposes. There are, however, no mandatory programs with similar requirements and coverage that would provide substantive guidance for estimating the costs of this proposed rule.

On October 11, 2002, USDA published voluntary guidelines (67 FR 63367) for country of origin labeling of the covered commodities. USDA invited public comments on the utility of these guidelines, including the costs and benefits of the program. USDA also prepared an estimate of the information collection burden that would be associated with implementation of the voluntary guidelines and invited comments on the estimated information collection burden. In addition, USDA also sought comments on this rulemaking for mandatory COOL and held 12 public listening and information sessions across the country. We also met with many industry groups and individuals to discuss this rulemaking and visited facilities at all levels of the supply chain to learn about current industry practices and changes that would be required to implement mandatory COOL. In addition, a number of studies have been produced to address various issues relating to the economic impacts associated with implementation of mandatory COOL.

To develop estimates of the cost of implementing this proposed rule, we reviewed the comments received on the voluntary guidelines, the comments received regarding this rulemaking for mandatory COOL, and available economic studies. No single source of information, however, provided

comprehensive coverage of all economic benefits and costs associated with mandatory COOL for all of the covered commodities. We applied our knowledge about the operation of the supply chains for the covered commodities to synthesize the available information about the proposed rule's potential costs.

Cost drivers: This proposed rule is a retail labeling requirement. Retail stores subject to this proposed rule will be required to inform consumers as to the country of origin of the covered commodities that they sell. To accomplish this task, individual package labels or other point-of-sale materials will be required. If products are not already labeled by suppliers, the retailer will be responsible for labeling the items or providing the country of origin information through other point-of-sale materials. This may require additional retail labor and personnel training. A recordkeeping system will be required to ensure that products are labeled accurately and to permit compliance and enforcement reviews. For most retail firms of the size defined by the statute (*i.e.*, those retailing fresh and frozen fruits and vegetables with an invoice value of at least \$230,000), we assume that recordkeeping will be accomplished primarily by electronic means. Modifications to recordkeeping systems will require software programming and likely will entail additional computer hardware. We expect that retail stores will also undertake efforts to ensure that their operations are in compliance with the proposed rule.

Prior to reaching retailers, most covered commodities move through distribution centers or warehouses. Direct store deliveries (such as when a local truck farmer delivers fresh produce directly to a retail store) are an exception. Distribution centers will be required to provide retailers with country of origin information. This will require additional recordkeeping processes to ensure that the information passed from suppliers to retail stores permits accurate product labeling and permits compliance and enforcement reviews. Additional labor and training may be required to accommodate new processes and procedures needed to maintain the flow of country of origin information through the distribution system. There may be a need to further segregate products within the warehouse, add storage slots, and alter

product stocking, sorting, and picking procedures.

Packers and processors of covered commodities will also need to inform retailers and wholesalers as to the country of origin of the products that they sell. To do so, their suppliers will need to provide documentation regarding the country of origin of the products that they sell. Maintaining country of origin identity through the packing or processing phase is more complex if products from more than one country are involved. For example, the identity of fresh kiwi fruit from California and New Zealand entering the same packing house would need to be maintained throughout the packing operation. The efficiency of operations may be affected as products are segregated in receiving, storage, processing, and shipping operations. For packers and processors handling products from multiple origins, there may also be a need to separate shifts for processing products from different origins, or to split processing within shifts. In either case, costs are likely to increase. Records will need to be maintained to ensure that accurate country of origin information is retained throughout the process and to permit compliance and enforcement reviews.

Processors handling only domestic origin products or products from a single country of origin may have lower implementation costs compared with processors handling products from multiple origins. A processor that already sources products from a single country of origin would not face additional costs associated with product segregation and tracking. Procurement costs also may be unaffected in this case, if the processor is able to continue sourcing products from the same suppliers. Alternatively, a processor that currently sources products from multiple countries of origin may choose to limit its source to a single country of origin to avoid costs associated with product segregation and tracking. In this case, such cost avoidance would be partially offset by additional procurement costs to source supplies from a single country of origin. Additional procurement costs may include higher transportation costs due to longer shipping distances and higher acquisition costs due to supply and demand conditions for products from a particular country of origin, whether domestic or foreign.

At the production level, agricultural producers and fish harvesters will need to create and maintain records to

establish country of origin information for the products they sell. This information will need to be transferred and maintained as the products move through the supply chains. In general, additional producer costs include the cost of establishing and maintaining a recordkeeping system for country of origin information, animal or product identification, and labor and training.

Recordkeeping burden: On November 21, 2002, USDA published in the **Federal Register** a Notice of Request for Emergency Approval of a New Information Collection (67 FR 70205) for the interim guidelines for Voluntary Country of Origin Labeling for Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts that were published on October 11, 2002 (67 FR 63367). The Notice provided USDA's estimate of the recordkeeping burden imposed by voluntary COOL, under the requirements of PRA. That PRA cost estimate related solely to the recordkeeping burden and did not consider other costs imposed by COOL. Also, PRA requirements do not address the benefits of a program. Thus, PRA recordkeeping burden published by USDA did not reflect the full costs and benefits of voluntary COOL.

Cost analyses: Despite the numerous comments that USDA has received on the voluntary guidelines and on this rulemaking, there is surprisingly little quantitative evidence on the likely costs of mandatory COOL. The proposed rule does not specify the systems that affected entities must put in place to implement mandatory COOL. Instead, market participants will be given flexibility to develop their own systems to comply with the proposed rule. There are many ways in which the proposed rule's requirements may be met, and this contributes to the difficulty in arriving at a quantitative assessment of cost impacts. Nonetheless, a number of studies and submitted comments shed light on the potential costs of mandatory COOL. Generally, comments addressed costs for a particular firm or a segment of a particular supply chain for a given covered commodity. Of the studies on potential economic impacts of mandatory COOL, only a handful developed estimated incremental implementation costs for market participants. We use the results of these studies, comments received, and knowledge of the affected industries to develop a range of the estimated incremental cost impacts of this proposed rule.

Estimated costs from the studies considered by USDA are summarized in Table 2. The studies are VanSickle, McEowen, Taylor, Harl, and Connor (Ref.5); Sparks Companies Inc. (Ref. 19);

Hayes and Meyer (Ref. 20); and Davis (Ref. 21). All of the studies report annual costs, and the costs shown in Table 2 are assumed to represent first-year costs for mandatory COOL. In those

cases in which the studies do not state so explicitly, USDA infers from the construction of the estimates that they represent first-year costs.

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Table 2. Summary of Studies of Mandatory COOL Cost Estimates							
Study / Segment	Beef	Lamb	Pork	Fish	Fruit and Veg.	Peanuts	Total
VanSickle et al. <i>Million dollars</i>							
Producer	158.2	9.8	11.6	n.a.	24.5	1.9	206.0
Processor	(a)	(a)	(a)	n.a.	(a)	(a)	2
Retailer	(a)	(a)	(a)	n.a.	(a)	(a)	68
Total	(a)	(a)	(a)	n.a.	(a)	(a)	276
Sparks/CBW							
Producer	307 - 365	n.a.	86.3 (b)	1	20	n.a.	414.3 - 472.3
Processor	459 - 546	n.a.	164.5 - 456.5 (b)	15	34	n.a.	672.5 - 1,051.5
Retailer	805	n.a.	263	50 - 70	1,500 - 3,000	n.a.	2,618 - 4,138
Total	1,571 - 1,716	n.a.	513.8 - 805.8	66 - 86	1,554 - 3,054	n.a.	3,705 - 5,662
Hayes and Meyer							
Producer	n.a.	n.a.	200.5	n.a.	n.a.	n.a.	200.5
Processor	n.a.	n.a.	636.7	n.a.	n.a.	n.a.	636.7
Retailer	n.a.	n.a.	187.5	n.a.	n.a.	n.a.	187.5
Total	n.a.	n.a.	1,024.7	n.a.	n.a.	n.a.	1,024.7
Davis							
Producer	1,311.4	n.a.	n.a.	n.a.	n.a.	n.a.	1,311.4
Processor	473	n.a.	n.a.	n.a.	n.a.	n.a.	473
Retailer	4,608.5	n.a.	n.a.	n.a.	n.a.	n.a.	4,608.5
Total	6,392.9	n.a.	n.a.	n.a.	n.a.	n.a.	6,392.9
(a) This amount is included in "Total" column.							
(b) All costs for integrated pork production and packer/processor systems are allocated to the "Processor" category in this table.							
n.a. Not applicable.							

At a minimum, mandatory COOL will entail the transfer of information through the respective supply chains, from production through retail sales. While information currently flows through the system as products move through the supply chains, there is little evidence that country of origin information typically is a component of this information flow. Thus, we believe that transfer and maintenance of records to establish COOL claims will be accomplished through modification of the current recordkeeping and systems used for accounting, purchasing, sales, production, and related operations.

VanSickle, *et al.* (Ref. 5) address the recordkeeping cost to producers in their critique of USDA's estimate of the recordkeeping burden for the voluntary COOL guidelines. This study notes that producers currently maintain a variety of records for taxes, health rules, and other programs and they conclude that producers would require no new recordkeeping. As part of their critique of USDA's recordkeeping burden estimates, VanSickle, *et al.* recalculated the recordkeeping burden using different producer numbers and different labor costs. Although the study does not separately show calculations for each type of producer, the report permits such calculations to be made. Table 2 shows the results of these calculations, with the estimated recordkeeping for producers of each covered commodity calculated separately.

VanSickle, *et al.* used the National Agricultural Statistics Service (NASS) data to determine the number of producers, and although in disagreement with the assumption, they used USDA's assumption that producers would require 8 hours to establish a recordkeeping system and 12 hours annually to maintain it. They then applied Bureau of Labor Statistics (BLS) data showing that the median value of farm labor is \$7.67 per hour. Using these procedures, VanSickle, *et al.* estimated that the recordkeeping burden for cattle producers would be \$63.2 million to establish a mandatory COOL recordkeeping system and \$94.8 million to maintain it. Thus, the total first-year cost to cattle producers would be \$158 million. Table 2 shows the results of similar calculations for lamb, pork, fruit, vegetable, and peanut producers, as well

as processors and retailers. As discussed previously, however, recordkeeping costs are not the only costs that we anticipate will be incurred by many market participants when implementing the proposed rule. In addition, Vansickle, *et al.* did not adjust labor rates to account for benefits and other labor costs such as social security, unemployment insurance, and workers compensation. Thus, we believe that these estimated recordkeeping costs underestimate the total costs for affected entities to implement mandatory COOL.

Sparks Companies, Inc., and Cattle Buyers Weekly (Sparks/CBW) submitted to USDA a study that provides estimated costs of mandatory COOL for the beef, pork, fish, and perishable agricultural commodity supply chains (Ref. 19). For each supply chain, the study identifies cost estimates for producers, packers/processors, retail distributors, and retailers.

The Sparks/CBW study identifies additional cost factors expected to be incurred to implement mandatory COOL. For example, at the cow/calf rancher and backgrounder production level of the beef supply chain, the Sparks/CBW study identifies additional costs for animal identification tags/chips, data input and recordkeeping, and scanner hardware and software to read electronic tags. This study provides estimated costs for these processes, although supporting documentation for the cost estimates is not extensive. USDA concludes that most industry participants will likely incur the types of costs identified in the Sparks/CBW study. Based on comments received and knowledge of the affected industries, USDA further believes that the Sparks/CBW estimates represent the types of costs likely to be incurred as the affected entities implement the provisions of the proposed rule.

Hayes and Meyer developed cost estimates for the pork supply chain to implement mandatory COOL (Ref. 20). The study estimated the cost for the pork industry to adopt a traceback system similar to the system implemented in the European Union. While USDA expects some firms to adopt such a system, we do not believe that a full traceback system on an individual animal basis will be required to implement the proposed rule. Other less costly approaches likely will meet

the requirements of the proposed rule. For example, group identification of animals and pork products may suffice to establish country of origin claims. Therefore, USDA concludes that the Hayes and Meyer study presents a cost estimate that is at the upper end of the estimated costs needed to implement mandatory COOL.

Davis developed cost estimates for the beef supply chain to implement mandatory COOL (Ref. 21). The study identifies factors anticipated to increase costs as a result of mandatory COOL, such as permanent animal identification, third party audit, and product segregation. The total estimated costs presented in the study are substantially higher than other studies suggest, and USDA concludes that actual costs for implementing the proposed rule likely will be lower.

Incremental cost impacts on affected entities: USDA believes that at a minimum, affected entities will need to modify their existing recordkeeping systems to accommodate this proposed rule. Comments received on the voluntary COOL guidelines and on this rulemaking, USDA's knowledge of the affected industries, and visits to establishments of affected firms indicate that few existing recordkeeping systems currently provide the information that will be needed to substantiate COOL claims throughout the supply chain. We concur, however, with the many comments received on the voluntary guidelines and on the mandatory COOL rulemaking that many entities in the supply chains for the covered commodities already maintain the types of records that will be needed to implement the proposed rule. Thus, the marginal impact of adapting existing recordkeeping systems is expected to be relatively small. The large number of affected entities, particularly producers, leads to larger aggregate recordkeeping costs even with relatively low costs per entity. USDA's estimates of these costs are detailed in the PRA analysis, which describes the anticipated recordkeeping burden associated with this proposed rule. Table 3 summarizes these estimated recordkeeping costs for the first year of implementation, which USDA assumes to be the lower range of potential implementation costs for this proposed rule because costs other than recordkeeping are not included.

TABLE 3.—LOWER RANGE ESTIMATES OF FIRST-YEAR IMPLEMENTATION COSTS PER AFFECTED INDUSTRY SEGMENT
[In millions of dollars]

	Beef	Lamb	Pork	Fish	F & V	Peanut	Multi	Total
Producer	196	13	12	9	5	1		235
Intermediary	(¹)	(¹)	(¹)	8	23	0	91	123
Retailer	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	224	224
Total	² 196	² 13	² 12	² 16	² 28	² 2	315	582

¹ These costs are included in the "Multi" column.

² This figure represents a partial total for this covered commodity, with remaining costs included in the "Multi" column.

As shown in Table 3, USDA estimates that the direct, incremental cost for firms to implement this proposed rule will total at least \$582 million in the first year. This is the estimated incremental or marginal cost for firms to comply with the new recordkeeping requirements for mandatory country of origin labeling. Costs to producers are estimated at \$235 million, costs to intermediaries such as handlers, processors and wholesalers are estimated at \$123 million, and costs to retailers are estimated at \$224 million. USDA believes, however, that there likely will be additional operational costs incurred as a result of this proposed rule.

To estimate upper range costs of this proposed rule, we focus on units of

production that are impacted rather than entities that are affected. The main reason for doing so is that available studies of the potential costs of mandatory country of origin labeling mainly estimate costs per unit. Thus, determining the appropriate number of units is an important step and provides a basis for comparing estimates from different sources.

The upper range cost estimates developed by USDA represent the likely high end of costs to implement fully the proposed rule in the first year. The upper range cost estimates do not represent the absolute maximum cost estimates reported in available studies or in comments submitted to USDA. Rather, the upper range cost estimates represent USDA's assessment of

available information on implementation costs and the reasonableness of estimated costs at the upper end of the spectrum.

For livestock producers the relevant unit of production is an animal because there will be costs associated with maintaining country of origin information on each animal. These costs may include recordkeeping and ear tagging, segregation, and related means of identification on either an individual animal or lot basis. Annual domestic slaughter numbers are used to estimate the flow of animals through the live animal production segment of the supply chain. Table 4 shows annual slaughter numbers for cattle, hogs, and sheep and lambs (Ref. 22).

TABLE 4.—ESTIMATED ANNUAL UNITS OF PRODUCTION AFFECTED BY MANDATORY COUNTRY OF ORIGIN LABELING

	Beef	Pork	Lamb	Fish	F & V	Peanuts
Producer	Million Head			Million Pounds		
	36.8	100.3	3.3	7,707	97,083	4,239
	Million Pounds					
Intermediary	26,914	18,375	367	4,112	115,982	713
Retailer	7,800	2,214	135	1,702	48,017	222

For fish producers, production is measured by round weight (live weight) pounds of fish, except mollusks, which excludes the weight of the shell. Wild-caught fish and shellfish production is measured by U.S. domestic landings for fresh and frozen human food, which was estimated at 6,691 million pounds for 2001 (Ref. 23). USDA assumes that fish harvesters generally know whether their catch is destined for fresh and frozen markets, canning, or industrial use. Overall production numbers for aquaculture or farm-raised fish are estimated from United Nations Food and Agriculture Organization data. In 2001, U.S. aquacultural production was estimated at 1,016 million pounds (Ref. 24). USDA thus estimates the total production of wild and farm-raised fish and shellfish at 7.7 billion pounds.

For fruits and vegetables, USDA assumes that essentially all production is predestined for fresh or processing use. That is, growers know before the crop is produced whether it will be sold for fresh consumption or for processing. However, USDA assumes that producers do not know whether their products ultimately will be sold to retailers, foodservice firms, or exporters. Therefore, USDA assumes that all fresh fruit and vegetable production and production destined for frozen processors at the producer level will be impacted by this proposed rule. The total production figure thus represents an estimate of volume of fresh and frozen production impacted by the proposed rule. Table 4 presents production estimates for 2001 for fruits and vegetables (Ref. 25).

As with livestock production, USDA assumes that all peanut production will be impacted by this proposed rule. Peanut producers generally do not know what end uses or marketing channels their production will follow. Depending on qualities and grades produced, a given peanut producer's harvest could end up in a variety of product forms sold through several marketing outlets. U.S. peanut production for 2001 is shown in Table 4 (Ref. 25).

USDA assumes that all sales by intermediaries such as handlers, packers, processors, wholesalers, and importers will be impacted by the proposed rule. Although some product is destined exclusively for foodservice or other channels of distribution not subject to the proposed rule, USDA assumes that these intermediaries will

seek to keep their marketing options open for possible sales to subject retailers. USDA Economic Research Service (ERS) estimates of food disappearance for 2001 are used to measure the flow of covered commodities through intermediaries (Ref. 26). Food disappearance includes imports, which are impacted by the proposed rule, but does exclude exports, which are not.

For intermediaries, Table 4 shows total beef, pork, and lamb disappearance measured on a carcass-weight basis. Fresh, frozen, and canned fish and shellfish food disappearance is shown as edible meat weight. Total disappearance of fresh and frozen fruits and vegetables is computed from per capita consumption data measured on a farm-weight basis. Peanut disappearance is measured on a farmers' stock basis. The quantity of 713 million pounds shown in Table 4 is 32 percent of total peanut food disappearance to estimate peanut use in product forms subject to this proposed rule—snack peanuts (23 percent) and roasted in-shell peanuts (9 percent) (Ref. 27).

For retailers, food disappearance figures are adjusted to estimate consumption through retailers as defined by the statute. For each covered commodity, disappearance figures are multiplied by 0.414, which represents the estimated share of production sold through retailers covered by this proposed rule. To derive this share, the factor of 0.629 is used to remove the 37.1 percent food service quantity share of total food in 2002 (Ref. 28). This factor is then multiplied by 0.658, which was the share of sales by supermarkets, warehouse clubs and superstores of food for home consumption in 2002 (Ref. 29). In other words, USDA assumes supermarkets,

warehouse clubs and superstores represent the retailers as defined by PACA, and these retailers are estimated to account for 65.8 percent of retail sales of the covered commodities.

Other retail food outlets were assumed not to meet the statutory definition of a retailer under PACA. These latter outlets include convenience stores, other grocery stores, specialty food stores, mass merchandisers, other stores, home delivered and mail order, and farmers, processors, wholesalers, and other. USDA recognizes that not all supermarkets meet the statutory definition of a PACA retailer, while other retail outlets would meet the definition. USDA assumes that the relative volumes of covered commodities moving through supermarkets that are not PACA retailers offset the quantities of commodities moving through PACA retailers that are not supermarkets or warehouse clubs and superstores. USDA invites comments on the validity of this assumption.

Beef, pork, and lamb retail movement is measured on a retail-weight basis. Beef and lamb retailer estimates shown in Table 4 are retail-weight food disappearance figures for 2001 multiplied by the factor of 0.414. Unlike beef and lamb, however, much of the pork carcass typically is processed into products that would not be covered commodities under the proposed rule. For example, most of the ham and bacon are cured, and other cuts such as picnic meat are used for sausage and other processed products. Thus, an additional factor of 0.375 is used for pork, which is the estimate of the proportion of the retail-weight pork carcass that is used for fresh pork cuts that would be classified commodities under the proposed rule. The cuts assumed to be

covered commodities are fresh ham, all of the loin cuts, spareribs, and the entire Boston butt. Estimates of the retail weight of these cuts and other cuts are taken from the National Pork Board (Ref. 30). USDA recognizes that some of these cuts will be processed into items not covered by the proposed rule, while other cuts will be sold in unprocessed forms that would be covered by the proposed rule. Nonetheless, USDA believes that 37.5 percent represents the best available estimate of the proportion of the retail pork carcass that would be covered. When combined with the 41.4 percent of commodities estimated to be sold by subject retailers, USDA estimates that 15.5 percent of estimated pork consumption would be covered by the proposed rule.

Estimated fresh, frozen, and canned fish and shellfish retailer volume shown in Table 4 is measured by edible meat weight. Fresh and frozen fruit and vegetable retailer volume is measured by farm weight. Retailer peanut volume is measured on a kernel basis, as the majority of peanuts sold at retail are without the shell.

Table 5 summarizes the upper range of direct, incremental costs that USDA believes firms will incur during the first year as a result of this proposed rule. These estimates are derived primarily from the available studies that addressed cost impacts of mandatory COOL. As discussed above, USDA believes that implementation of mandatory COOL will entail additional recordkeeping burden at the least and likely will entail other costs as well. Thus, to determine the upper range of implementation costs, we focus on available studies that attempt to account for costs beyond the recordkeeping burden.

TABLE 5.—UPPER RANGE ESTIMATES OF FIRST-YEAR IMPLEMENTATION COSTS PER AFFECTED INDUSTRY SEGMENT

[In millions of dollars]

	Beef	Pork	Lamb	Fish	F & V	Peanuts	Total
Producer	368	150	15	19	24	1	578
Intermediary	538	368	7	21	580	4	1,517
Retailer	780	155	9	119	720	3	1,787
Total	1,686	673	32	159	1,324	8	3,882

For beef producers, the range of Sparks/CBW cost estimates is \$8.63 to \$10.63 per head, with estimated costs of \$4.88 per head for cow-calf producers and backgrounders and \$3.75 to \$5.75 per head for feedlots (Ref. 19). Davis (Ref. 21) estimates costs for beef producers of up to \$15.30 per head, with \$13.30 per head for cow-calf

producers, \$1 per head for stockers, and \$1 per head for feedlots.

USDA believes that implementation costs per head for cow-calf producers will be relatively small because many cow-calf operators likely already maintain much of the information that will be needed to substantiate country of origin, such as breeding records,

production records, and other business records. Costs for backgrounders, stockers, and feeders likely will be higher because of the need to track country of origin information on cattle from multiple sources. Animal identification tags, development of data bases, and additional hardware for accounting and tracking likely will be

required for many operations, particularly larger operations, to maintain country of origin information on cattle that move through their operations. Segregation of animals by origin may be implemented at some operations to facilitate recordkeeping, and additional labor likely will be needed to tag or otherwise identify animals, record information, and transfer information to purchasers. Considering all producer segments together, USDA adopts \$10 per head as an upper range estimate of costs to cattle producers to implement the proposed rule. This estimate reflects USDA's expectation of relatively small implementation costs at the cow-calf level of production, but relatively higher costs each time cattle are resold. Typically, fed steers and heifers change hands two, three, or more times from birth to slaughter, and each exchange will require the transfer of country of origin information. Thus, total upper range costs for beef producers are estimated at \$368 million.

For intermediaries in the beef sector, Sparks/CBW estimates costs of \$15 per head to \$18 per head for packers and processors of steers and heifers and \$4 per head for cows and bulls for a total of \$429 million to \$546 million. Assuming commercial beef production of about 26 billion pounds for the 35 million head of cattle included in the Sparks/CBW estimates, estimated costs per pound are \$0.017 to \$0.021. Davis estimates costs of \$11 million per plant for the 43 largest beef packing plants, resulting in a national total of \$473 million. Assuming that these plants account for about 90 percent of total U.S. commercial beef production of about 27 billion pounds in 2002, this estimated cost works out to \$0.0195 per pound.

USDA expects that intermediaries will face increased costs associated with tracking cattle and the covered beef commodities produced from these animals and then providing this information to subsequent purchasers, which may be other intermediaries or covered retailers. Plain and Grimes estimate that 88.7 percent of the supply of steaks and roasts and 75.5 percent of the beef trimmings used to produce ground beef for U.S. consumption were U.S. born, raised, and slaughtered beef in 2002 (Ref. 7). Thus, substantial portions of the beef supply are from sources not meeting the definition of U.S. born, raised, and slaughtered. Consequently, incremental costs for beef packers likely will include additional capital and labor expenditures to enable cattle from different origins to be segregated for slaughter, fabrication, and

processing. Considering the costs likely to be faced by intermediaries in the beef sector, USDA adopts \$0.02 per pound as an estimate of upper range costs, which is consistent with estimates from the available studies. Total upper range costs are thus estimated at \$538 million.

Sparks/CBW estimates costs of \$0.09 to \$0.12 per pound for beef retailers, with a total of \$805 million estimated for 8 billion pounds of beef sold assuming a cost of \$0.10 per pound. FSIS estimates the cost of retail labeling at approximately \$0.005 per package (Ref. 31), which is strictly the cost to apply a label and does not include costs such as recordkeeping or product segregation and tracking. Davis estimates total costs of \$428,500 per retail store to implement mandatory COOL for beef alone, for a total of \$4.6 billion nationally. Several supermarket retailers commented on the guidelines for voluntary country of origin labeling (67 FR 63367) and estimated costs to implement country of origin labeling at about \$26,000 to \$54,000 per store for all covered commodities (Refs. 32, 33, and 34). These estimates are an order of magnitude less than Davis' estimated cost per store, suggesting that the estimate of \$428,500 per store for beef alone is substantially overstated. A comment from another retailer estimated costs of \$0.075 to \$0.08 per pound just for labeling and recordkeeping for beef, pork, and seafood at retail (Ref. 35). USDA adopts \$0.10 per pound as an upper range estimate of implementation costs for beef retailers, for a total of \$780 million. This figure reflects the costs for individual package labels, meat case segmentation, record keeping and information technology changes, labor, training, and auditing. In addition, there likely will be increased costs for in-store butcher department operations related to cutting, repackaging, and grinding operations.

Total costs for affected entities in the beef sector are thus estimated at \$1.7 billion.

For pork producers, Sparks/CBW estimates costs at approximately \$1 per head for all types of production systems. Sparks/CBW takes into account cost efficiencies associated with integrated production and processing systems and large-scale production. Hayes and Meyer estimate costs at \$2 per head for all producers. Both the Sparks/CBW and the Hayes and Meyer studies appear to account credibly for the cost increases that pork producers are likely to encounter. Therefore, USDA adopts the midpoint of the per-head costs estimated by these two studies as the estimated upper range costs for pork

producers. With annual slaughter of 100.3 million head, total costs for producers are estimated at \$150 million.

For processors, Sparks/CBW estimates costs at \$2 to \$6 per head for non-integrated hog packers, \$0.50 per head for vertically integrated hog production and packing systems (including costs associated with hog production), and \$2 per head for sows and boars. In the Sparks/CBW study, vertically integrated systems account for approximately 26 percent of total slaughter hog production. For all processors, the Sparks/CBW study estimates total costs of \$158 million to \$450 million, assuming that half of the costs per head for vertically integrated production and packing accrue to the packing operation. Based on 2002 commercial pork production, the Sparks/CBW cost estimates range from \$0.008 to \$0.023 per pound. Hayes and Meyer estimate processing costs at \$6.10 per head for all packers, which implies total costs of \$612 million based on slaughter of 100.3 million head or costs of \$0.031 per pound based on 2002 commercial pork production. USDA believes that upper range costs for all pork sector intermediaries (including handlers, processors, and wholesalers) will be similar to costs for beef sector intermediaries. USDA therefore estimates upper range costs for pork industry intermediaries at \$0.02 per pound, for a total of \$368 million.

For retailers, Sparks/CBW estimates costs for pork at \$0.055 per pound at the retail store level and \$0.02 to \$0.03 per pound at the retail distribution center, for a total of \$0.075 to \$0.085 per pound at the retail level. Hayes and Meyer estimate retail costs at \$1.87 per animal, or \$0.01 per pound. As noted previously, FSIS estimates the cost of retail labeling at approximately \$0.005 per package for the label alone (Ref. 31). Taking these sources into consideration, USDA estimates upper range costs for retailers of pork at \$0.07 per pound. USDA's upper range per-pound cost estimate for pork is lower than for beef primarily to reflect the higher costs incurred by in-store grinding operations to produce ground beef. Although ground pork may also be produced in-store, most ground pork is processed into sausage and other products not covered by the proposed rule. Total estimated costs for pork retailers are \$155 million. Total upper range costs for the pork sector are estimated at \$673 million.

USDA did not identify any quantitative analyses of costs of mandatory COOL on the lamb industry, other than the paperwork burden estimates developed by VanSickle, *et al.*

(Ref. 5). To obtain an estimate of the upper range on implementation costs for lamb producers, USDA assumed that cost impacts on a per-unit basis would fall between costs facing beef producers and pork producers. Lamb production is similar to beef production in several ways. Both sheep and cattle are ruminants, with breeding stock and young animals typically raised on open pasture and rangelands, and slaughter animals typically finished on grain-based diets in confined feeding operations. Cows normally produce one calf, while sheep normally produce one or two lambs. In other respects, lamb production is similar to pork production. These two industries have similar numbers of producers—about 64,000 sheep and lamb producers versus 67,000 hog and pig producers (Table 1). Slaughter animals of both species are marketed at about the same age, about 6 months. Because both lambs and pigs are slaughtered at a relatively young age, the animals typically do not change ownership several times, as is most often the case with cattle. USDA believes that per-head costs for lamb producers will be considerably less than for beef producers but higher than for pork producers. USDA assumes that upper range costs per head for lamb producers will be \$4.50 per head, which is three times the per-head costs assumed for pork producers and less than half the costs assumed for beef producers. Total upper range costs for lamb producers are estimated at \$15 million.

USDA assumes that intermediaries in the lamb sector will face per-pound costs similar to costs faced by beef and pork sector intermediaries, which are estimated at \$0.02 per pound. Total costs for lamb sector intermediaries are thus estimated at \$7 million.

USDA believes that costs to retailers for lamb will be similar to costs borne for pork, which was estimated at \$0.07 per pound. Total upper range costs for retailers of lamb are estimated at \$9 million.

Summing the upper range estimates for producers, intermediaries, and retailers results in estimated upper range costs of \$32 million for the lamb industry.

Regarding potential cost impacts of mandatory COOL on the fish and seafood sector, Sparks/CBW conducted the only quantitative assessment identified by USDA. Sparks/CBW estimates negligible costs for producers, \$0.005 per pound for processors and wholesalers, and \$0.05 to \$0.07 per pound for retailers.

USDA believes that costs to fish and seafood producers will be higher than

projected by Sparks/CBW, which estimates total costs of \$1 million. For wild-caught fish, producers will need to maintain and transfer records on where fish are harvested and also transfer information on whether the vessel is U.S. flagged. Fish farming operations will need to maintain and transfer information regarding the location of production and of the origin of fish into the operation. USDA expects that fish and seafood producers will incur about half of the cost faced by processors and wholesalers. Producers will need to provide information on the products they sell while processors and wholesalers will need to track information on products that they both purchase and sell. Sparks/CBW estimates costs at \$0.005 per pound for fish and seafood processors and wholesalers, so half of this amount is \$0.0025 per pound. Total upper range costs for fish and seafood producers are thus estimated at \$19 million.

USDA adopts \$0.005 per pound as an upper range estimate of costs for intermediaries in the fish and seafood sector, which is the Sparks/CBW estimate for processors and wholesalers. Processors will need to collect country of origin information from producers, maintain this information, and supply this information to other intermediaries or directly to retailers. In addition, there may need to be segregation of the product before and after processing to facilitate tracking of country of origin identity. There will also be labeling costs associated with providing country of origin information on consumer-ready packs of frozen and fresh fish that are labeled by processors. Total upper range costs for fish and seafood intermediaries are thus estimated at \$21 million.

At the retail level, Sparks/CBW estimates costs of \$0.05 to \$0.07 per pound for fish and seafood. USDA adopts the higher end of this range as an upper range estimate of costs for retailers of fish and seafood. The upper range estimate of \$0.07 per pound is consistent with the costs estimated for pork and lamb at retail, and results in total upper range costs of \$159 million for retailers of fish and seafood.

Total upper range costs for fish and seafood are estimated at \$118 million.

As with fish and seafood, Sparks/CBW is the only quantitative study of the costs of mandatory COOL for perishable agricultural commodities of which USDA is aware. Sparks estimates total costs of \$20 million for fruit and vegetable producers, \$34 million for processors and wholesalers, and \$1.5 billion to \$3 billion for retailers.

USDA agrees with Sparks/CBW that costs of mandatory COOL for fruit and vegetable producers will be relatively small, but believes that the Sparks/CBW estimate is too low. Although producers maintain many of the types of records that will be required to substantiate U.S. origin claims, USDA believes that this information is not universally transferred by producers to purchasers of their products. Producers will have to supply this type of information in a format that allows handlers and processors to maintain country of origin information so that it can be accurately transferred to retailers. USDA estimates upper range costs of \$0.00025 per pound for producers for fruits and vegetables to make and substantiate COOL claims, which equates to \$0.01 for a 40 pound container. Total upper range costs for fruit and vegetable producers are estimated at \$35 million.

As with fruit and vegetable producers, Sparks/CBW estimates relatively small costs for processors and wholesalers. USDA believes that fresh and frozen fruit and vegetable intermediaries will incur higher costs than those estimated by Sparks/CBW to implement the proposed rule. USDA believes that fruit and vegetable intermediaries will shoulder a sizeable portion of the burden of tracking and substantiating country of origin information. Intermediaries will need to obtain information to substantiate COOL claims by producers and suppliers; maintain COOL identity throughout handling, processing, and distribution; and supply retailer with COOL information through product labels and records. USDA estimates that the cost of these activities will be \$0.005 per pound for fruit and vegetable sector intermediaries, resulting in total estimated costs of \$580 million.

Sparks/CBW estimates costs of \$0.03 to \$0.06 per pound for retailers of fresh and frozen fruits and vegetables. USDA believes that costs at retail will be lower than estimated by Sparks/CBW. The Sparks/CBW study reflects information that was available subsequent to the release of the voluntary COOL guidelines, which included mixed products as covered commodities required to be labeled. Mixed products comprised of two or more covered commodities are defined as processed items in this proposed rule, and thus do not require country of origin labels. Based on comments received by USDA, costs for providing country of origin information for mixed products would be high. Examples of mixed products prepared at retail stores include mixed fruit cups, vegetable trays, and salads. Because these mixed products will not

require the tracking, identification, and recordkeeping that will be needed for covered commodities, USDA believes that per-unit costs for implementation of the proposed rule will be lower than would be the case under the voluntary COOL guidelines.

As discussed above, USDA believes that intermediaries will bear a portion of the burden of COOL tracking and labeling, which will lower implementation costs for retailers. USDA believes that virtually all frozen fruits and vegetables will be labeled by suppliers, thus imposing minimal incremental costs for retailers. In addition, a high proportion of fresh fruits and vegetables arrive at retail with labels or stickers that may be used to provide COOL information. USDA believes that fresh fruit and vegetable suppliers will provide COOL information on these labels and stickers, again imposing minimal incremental costs for retailers. Overall, USDA assumes that upper range costs for retailers will be \$0.015 per pound of fresh and frozen fruits and vegetables, for a total of \$720 million.

USDA identified no quantitative studies of the costs of mandatory

labeling on the peanut sector. The implementation costs for peanut farmers are assumed to be similar to costs incurred by fruit and vegetable farmers, because both groups of growers likely maintain similar types of records and information that will be needed to substantiate country of origin claims. As with fruits and vegetables, peanut farmers deliver raw product to intermediaries for processing and processors distribute product to wholesalers for distribution to retail and other outlets. Lacking additional information on implementation costs, USDA anticipates that upper range costs for the peanut sector will be similar to costs faced by the fresh and frozen fruit and vegetable sector. Therefore, USDA estimates that costs per pound for each segment of the industry will be the same: \$0.00025 for producers, \$0.005 for intermediaries and \$0.015 for retailers. As a result, USDA estimates upper range costs for the peanut industry of \$1 million for producers, \$4 million for intermediaries, and \$3 million for retailers, for a total of \$8 million.

USDA estimates total upper range incremental costs for this proposed rule of \$589 million for producers, \$1,517

million for intermediaries, and \$1,787 million for retailers for the first year. Total upper range incremental costs for all supply chain participants are estimated at \$3.9 billion for the first year.

There are wide differences in average estimated implementation costs for individual entities in different segments of the supply chain (Table 6). At the lower range, costs are estimated at an average of \$180 per producer, \$4,048 per intermediary, and \$49,581 per retailer at the firm level. At the establishment level, lower range costs are estimated at an average of \$180 per producer, \$3,443 per intermediary, and \$6,018 per retailer. With the exception of a small number of fishing operations, producer operations are single-establishment firms. Thus, average estimated costs per firm and per establishment are the same after rounding to the nearest dollar. Retailers subject to the proposed rule operate an average of just over eight establishments per firm. As a result, average estimated costs per retail firm also are just over eight times larger than average costs per establishment.

TABLE 6.—ESTIMATED FIRST-YEAR IMPLEMENTATION COSTS PER FIRM AND ESTABLISHMENT

	Lower range firm	Costs per establishment	Upper range firm	Costs per establishment
Producer	\$180	\$180	\$443	\$443
Intermediary	4,048	3,443	50,086	42,602
Retailer	49,581	6,018	396,089	48,073

At the upper range, average estimated implementation costs per producer remain relatively small at \$443. Estimated costs for intermediaries are substantially larger, averaging \$50,086 per firm and \$42,602 per establishment. At an average of \$48,073, retailers have the highest average estimated costs per establishment. Retailers also have the highest average estimated costs per firm, \$396,089.

Whether at the lower or upper range of estimated costs, the costs per firm and per establishment represent industry averages for aggregated segments of the supply chain. Large firms and establishments likely will incur higher costs relative to small operations due to the volume of commodities that they handle and the increased complexity of their operations. In addition, different types of businesses within each segment are likely to face different costs. Thus, the range of costs incurred by individual businesses within each segment is expected to be large, with some firms

incurring only a fraction of the average costs and other firms incurring costs many times larger than the average. Comments submitted by retailers on the voluntary guidelines (67 FR 63367) suggest that USDA's range of average estimated costs per store is reasonable. These firms estimated costs at approximately \$26,000 to \$54,000 per store, while USDA's range of estimated costs is approximately \$6,000 to \$48,000 per store (Refs. 32, 33, and 34).

Average costs per producer operation can be calculated according to the commodities that they produce (Table 7). Lower range costs average \$190 for livestock operations, \$103 for fish operations, and \$101 for fruit, vegetable, and peanut operations. At the upper range, average estimated costs are lowest for peanut producers (\$101) and highest for hog operations (\$2,241).

TABLE 7.—ESTIMATED FIRST-YEAR IMPLEMENTATION COSTS PER PRODUCER OPERATION

Producer type	Lower range costs	Upper range costs
Cattle	\$190	\$356
Sheep	190	231
Hogs	190	2,241
Fish	103	252
Fruit & Vegetable	101	510
Peanuts	101	101
All	180	443

The spread between the estimated lower and upper range costs is greatest for hog operations. The primary reason for this is that the lower range cost estimate reflects estimated recordkeeping burden and depends primarily on the number of operations rather than the volume of production per operation.

The upper range cost estimate reflects estimated costs per head, and depends primarily on the volume of production

per operation. Because average production per hog operation is comparatively large relative to other types of producer operations, estimated upper range costs per hog producer operation are relatively larger.

The lower range and upper range cost estimates do not reflect an absolute lower bound and an absolute upper bound on costs that may be incurred by affected firms during the first year of implementation of this proposed rule. Based on the wide disparity in comments received on the voluntary COOL guidelines and this rulemaking, the range of implementation costs for the proposed rule span from virtually nothing to many billions of dollars. Thus, USDA developed a range of cost estimates that reflects its assessment of costs that are reasonably likely to be incurred during the first year of implementation.

USDA believes that the major cost drivers for the proposed rule occur when livestock or covered commodities are transferred from one firm to another, when livestock or covered commodities are commingled in the production or marketing process, and when products are assembled and then redistributed to retail stores. In part, we believe that some requirements of the proposed rule will be accomplished by firms using essentially the same processes and practices as are currently used, but with information on country of origin claims added to the processes. This adaptation generally would require relatively small marginal costs for recordkeeping and identification systems. In other cases, however, firms may need to revamp current operating processes to implement the proposed rule. For example, a processing or packing plant may need to sort incoming products by country of origin in addition to weight, grade, color, or other quality factors. This may require adjustments to plant operations, line processing, product handling, and storage. Ultimately, we anticipate that a mix of solutions will be implemented by industry participants to effectively meet the requirements of the proposed rule. Therefore, we anticipate that direct incremental costs for the proposed rule likely will fall in the middle to upper end of the estimated range of \$582 million to \$3.9 billion.

One regulatory alternative considered by AMS would be to narrow the definition of a processed food item, thereby increasing the scope of commodities covered by the proposed rule. This could be achieved, for example, by deleting from the definition of a processed food item "a retail item derived from a covered commodity that has undergone a physical or chemical

change, and has a character that is different from that of the covered commodity."

There is insufficient information available to determine the cost impacts of expanding the number of items that would require country of origin labeling. There is, however, an indicator that provides a partial picture of how costs would increase with a wider scope of covered commodities. Altering the definition of a processed food item as indicated above would expand the scope of coverage to virtually all pork items, many of which would otherwise be excluded because they have undergone a physical or chemical change such as curing or smoking. This alternative would increase the scope of pork products required to be labeled at retail to virtually the entire carcass. As a result, the pounds of pork requiring retail labeling would increase from 2.2 billion pounds to 5.9 billion pounds. Upper range costs to retailers would increase by \$258 million, a 166 percent cost increase to retailers and a 38 percent cost increase to the pork supply chain. Supply chains for the other covered commodities likely would experience similar types of cost increases.

Another alternative for narrowing the definition of a processed food item would be to strike from the definition the phrase "a covered commodity that has been combined with * * * other covered commodities." In other words, mixed products would require country of origin labeling. This would greatly increase the burden of providing and substantiating country of origin information. When products are mixed, the burden of tracking and identifying labeling information rises as a multiple of the number of commodities in the product and the number of countries of origin for each commodity. Given the wide array of mixed products available, the range of countries of origin for the component ingredients and the lack of available data, quantifying the cost impacts of this alternative is not possible. Nonetheless, USDA expects that the costs would be large.

A converse regulatory alternative would be to broaden the definition of a processed food item, thereby decreasing the scope of commodities covered by the proposed rule. Accordingly, such an alternative would decrease implementation costs for the proposed rule. At the retail level and to a lesser extent at the intermediary level, cost reductions would be at least partly proportional to the reduction in the volume of production requiring retail labeling. Start-up costs for retailers and many intermediaries likely would be

little changed by a narrowing of the scope of commodities requiring labeling because firms would still need to modify their recordkeeping, production, warehousing, distribution, and sales systems to accommodate the requirements of the proposed rule for those commodities that would require labeling under the proposed definitions. Ongoing maintenance and operational costs, however, likely would decrease in some proportion to a decrease in the number of items covered by the proposed rule. On the other hand, implementation costs for the vast majority of agricultural producers would not be affected by a change in the definition of a processed food item. This is because USDA assumes that virtually all affected producers would seek to retain the option of selling their products through supply channels for retailers subject to the proposed rule.

USDA expects that further broadening the definition of a processed food item would have a relatively small impact on the incremental cost estimates. Reducing the number of items requiring labeling by expanding the definition of a processed food item would have a minimal impact on the estimated costs for producers and intermediaries; altering this definition would have the greatest impact on estimated retailer costs. However, the definition developed for this rule has taken into account comments from retailers and has resulted in excluding products that would be more costly and troublesome for retailers to provide country of origin information.

In any case, little information is available to determine the extent to which the volume of covered commodities changes under alternative definitions of a processed food item. Therefore, there is little basis for quantifying the cost impacts of changing the definition.

Another alternative considered by AMS would be to require that suppliers provide an affidavit for each transaction to the immediate subsequent recipient certifying that the country of origin claims and, if applicable, designations of wild or farm-raised, being made are truthful and that the required records are being maintained. USDA does not have an estimate of the number of transactions that would be impacted. Assuming, however, costs of just \$0.001 per pound of product sold by producers and intermediaries, and assuming that commodities are transferred at least twice between intermediaries, costs would increase by more than \$500 million compared to the alternative of having no affidavits. This would nearly double USDA's estimated lower range

costs for the proposed rule, and increase the estimated upper range costs by more than 12 percent.

Effects on the economy: The previous section estimated the direct, incremental costs of the proposed rule to the affected firms in the supply chains for the covered commodities. While these costs are important to those directly involved in the production, distribution, and marketing of covered commodities, they do not represent net costs to the U.S. economy or net costs to the affected entities for that matter.

Several analyses have examined the potential market level impacts of the COOL legislation. Lusk and Anderson (Ref. 36) analyzed the effects of mandatory COOL on the U.S. livestock sector by varying the magnitude of the incremental increases in costs and the share of these direct costs incurred by the producer and the combined processor/retailer segments of the beef and pork sectors. There are similarities between their approach and the approach used herein, which is discussed below. In particular, Lusk and Anderson examined market effects stemming from a range of incremental increases in costs for the beef and pork sectors. Their analysis did not, however, include other covered commodities, such as fruit and vegetables, commodities directly affected by changes in livestock production, like corn and soybeans, or the effect of mandatory COOL legislation on the rest of the U.S. economy. Also, the model used by Lusk and Anderson to analyze the impacts on the poultry, beef and pork sectors together did not enable the effects of mandatory COOL on consumers or on U.S. welfare to be estimated.

Grier and Kohl (Ref. 37) examined the impact of mandatory COOL on the U.S. pork sector. Their analysis assessed impacts on employment, the environment, and hog production but did not do so in an integrated framework. As a result, their study does not account for the pork sector's adjustment to changes in consumption and production patterns. In addition, the major impacts of their study result from their assumption that mandatory COOL would cause U.S. imports of Canadian feeder pigs to cease. USDA finds this assumption to be implausible because there is no credible evidence that mandatory COOL, at least as outlined under the proposed rule, will lead to a cessation of the hog trade between Canada and the United States.

The results of these analyses, while instructive, are limited in their usefulness because they only represent the results from an incomplete or partial

adjustment of the agriculture sector and the U.S. economy to mandatory COOL. These analyses are not comprehensive in their coverage of affected commodity sectors, focusing on the livestock sector for instance. Nor are the analyses comprehensive in their depiction of the linkages between the covered commodities and the rest of the U.S. economy and consequently their depiction of the overall economic adjustments that occur as a result of COOL. Consequently the results from these analyses are not readily comparable to USDA's analysis of the impacts of the proposed rule on the U.S. economy discussed below.

With respect to assessing the effect of this rule on the economy as a whole, it is important to understand that a significant portion of the costs directly incurred by the affected entities take the form of expenditures for additional production inputs, such as payments to others whether for increased hours worked or for products and services provided. As such, these direct, incremental costs to affected entities do not represent losses to the economy but rather transfers of money from one economic agent to another. As a result, the direct costs incurred by the participants in the supply chains for the covered commodities do not measure the impact of this rule on the economy as a whole. Instead, the relevant measure is the extent to which the proposed rule reduces the amount of goods and services that can be produced throughout the U.S. economy from the available supply of inputs and resources.

Even from the perspective of the directly affected entities, the direct, incremental costs do not present the whole picture. Initially, the affected entities will have to bear the full cost of implementing the proposed rule. However, over time as the economy adjusts to the requirements of the proposed rule, the burden facing suppliers will be reduced as their production level and the prices they receive change. What is critical in assessing the effect of this rule on the affected entities over the longer run is to determine the extent to which the entities are able to pass these costs on to others and consequently how the demand for their commodities is affected.

Conceptually, suppose that all the increases in costs from the proposed rule were passed on to consumers in the form of higher prices and that consumers continued to purchase the same quantity of the affected commodities from the same marketing channels. Under these conditions, the

suppliers of these commodities would not suffer any net loss from the proposed rule even if the increases in their operating costs were quite substantial. However, other industries might face losses as consumers may spend less on other commodities. It is unlikely, however, absent the proposed rule leading to changes in consumers' preferences for the covered commodities, that consumers will maintain their consumption of the covered commodities in the face of increased prices. Rather, consumers will likely reduce their consumption of the covered commodities. The resulting changes in consumption patterns will in turn lead to changes in production patterns and the allocation of inputs and resources throughout the economy. The net result, once all these changes have occurred, is that the total amount of goods and services produced by the U.S. economy will be less than before.

To analyze the effect of the changes resulting from the proposed rule on the total amount of goods and services produced throughout the U.S. economy in a global context, USDA utilized a computable general equilibrium (CGE) model developed by ERS. The ERS CGE model includes all the covered commodities and the products from which they are derived, as well as non-covered commodities that will be indirectly affected by the rule, such as poultry and feed grains. Peanuts, however, are aggregated with oilseeds in the model, and there is no meaningful way to modify the model to account for the impacts of the proposed rule on peanut production, processing, and consumption. The peanut sector, however, accounts for only 0.2 percent to 0.3 percent of the total estimated incremental costs for all directly impacted entities. Thus, omitting the direct costs on the peanut sector is expected to have negligible impacts with respect to estimated impacts on the overall U.S. economy.

The ERS CGE model traces the impacts from an economic "shock," in this case an incremental increase in operating costs, through the U.S. agricultural sector and the U.S. economy to the rest of the world and back through the inter-linking of economic sectors. By taking into account the linkages among the various sectors of the U.S. and world economies, a comprehensive assessment can be made of the economic impact on the U.S. economy of the proposed rule implementing COOL. The model reports resulting economic changes after a ten-year period of adjustment.

The results of this analysis indicate that the proposed rule implementing

COOL after the economy has had a period of ten years to adjust will have a more limited impact on the overall U.S. economy than the direct costs for the first year, alone, would suggest. Under the assumption that COOL will not change consumers' preferences for the covered commodities, USDA estimates that the overall costs to the U.S. economy of the proposed rule will, in terms of a reduction in consumers' purchasing power, range from \$138 million to \$596 million. This represents the cost to the U.S. economy after all transfers and adjustments in consumption and production patterns have occurred.

Overall costs to the U.S. economy after a decade of adjustment are significantly smaller than the first-year implementation costs to directly affected firms. This result does not imply that the implementation costs for directly affected firms have been substantially reduced from the initial estimates. While some of the increase in

their costs will be offset by reduced production and higher prices over the longer term, the suppliers of the covered commodities will still bear direct implementation costs. Prior to full economic adjustment, economic impacts on directly affected firms in the short term are expected to be larger than impacts on the economy after adjustment has taken place.

USDA estimates of the overall costs to the U.S. economy are based on our estimates of the incremental increases in operating costs to the affected firms. The model does not permit supply channels for covered commodities that require country of origin information to be separated from supply channels for the same commodities that do not require country of origin labeling. Thus, the direct cost impacts must be adjusted to accurately reflect changes in operating costs for all firms supplying covered commodities. Table 8 reports these adjusted estimates in terms of their percentage of total operating costs for

each of the directly impacted sectors. The percentages used are based on our estimate of the percentage change in operating costs for the entire supply channel and are adjusted between the various segments of each covered commodities' supply chain (producers, processors, importers, and retailers) based on USDA's estimate of how the costs of the regulation will be distributed among them. As a result, the cost changes shown in Table 8 only approximate the range of direct cost estimates previously described.

In addition, USDA assumes that domestic and foreign suppliers of the affected commodities located at the same level or segment of the supply chain face the same percentage increases in their operating costs. In reality, imported covered commodities likely would enjoy some measure of competitive advantage as a portion of those products already enter the United States with country of origin labels.

TABLE 8.—HIGH AND LOW INCREASE IN OPERATING COSTS BY SUPPLY CHAIN SEGMENT AND INDUSTRY

	Beef	Pork & lamb	Fish	Fresh produce
	Percent change			
Low Cost:				
Farm Supply:				
Domestic	0.50	0.25	0.25	0.25
Imported	0.50	0.25	0.25	0.25
Processing:				
Domestic	0.50	0.50	(¹)	(¹)
Imported	0.50	0.50	(¹)	(¹)
Retail:				
Domestic	0.50	0.50	0.50	0.75
Imported	0.50	0.50	0.50	0.75
High Cost:				
Farm Supply:				
Domestic	2.00	1.00	1.00	1.00
Imported	2.00	1.00	1.00	1.00
Processing:				
Domestic	2.00	2.00	(¹)	(¹)
Imported	2.00	2.00	(¹)	(¹)
Retail:				
Domestic	2.00	2.00	2.00	3.00
Imported	2.00	2.00	2.00	3.00

¹ Not applicable.

As discussed above, consumption and production patterns will change as the incremental increases in operating costs outlined above are passed on, at least partially, to consumers in the form of higher prices by the affected firms. The increases in the prices of the covered commodities will in turn cause exports and domestic consumption and ultimately domestic production to fall. The results of our analysis indicate that U.S. production of all the covered commodities combined will decline from 0.15 percent to 0.92 percent and

that the overall price level for these commodities (a weighted average index of the prices received by suppliers for their commodities) will increase by 0.06 percent to 0.64 percent.

The structure of the model does not enable changes in net revenues to suppliers of the covered commodities to be determined. Likewise, the model cannot be used to determine the extent to which the reductions in production arise from some firms going out of business or all firms cutting back on their production. To provide an

indication of what effect this will have on the suppliers of the covered commodities, USDA estimated changes in revenues using the model results. The result of this calculation shows that revenues to suppliers of the covered commodities will decline by \$175 million to \$195 million.

The costs of the proposed rule, however, will not be shared equally by all suppliers of the covered commodities. The distribution of the final costs of the rule will be determined by several factors in addition to the

direct costs of complying with the rule. These are the availability of substitute products not covered by the rule and the relative competitiveness of the affected suppliers with respect to other sectors of the U.S and world economies.

Although the increases in operating costs are the initial drivers behind the changes in consumption and production patterns resulting from this rule, they do

not, as can be seen by examining Table 9, determine which commodity sector will be most affected. Table 9 contains the percentage changes in prices, production, exports, and imports for the three main segments of the marketing chain by covered commodity. The results are reported for the low and high end of the estimated range of increases in incremental costs. Table 9 also

presents results for chicken, which is not a covered commodity but is a substitute for beef, lamb, and pork and as a result could be significantly affected by changes in consumption of these products. As mentioned previously, in the ERS CGE model peanuts are included with oilseed products. As a result they are not included in this analysis.

TABLE 9.—ESTIMATED IMPACT OF PROPOSED RULE ON U.S. PRODUCTION, PRICES AND TRADE OF IMPACTED SECTORS ¹

	Price	Production	Exports	Imports
	Percent change from the base year			
Low Incremental Cost:				
Fruits and Vegetables	0.11	-0.15	-0.17	-0.20
Cattle and Sheep	0.05	-0.14	-0.11	-0.06
Broilers	0.01	0.01	-0.00	0.02
Hogs	0.05	-0.07	-0.05	0.01
Beef and Lamb	0.07	-0.15	-0.05	-0.10
Chicken	0.01	0.04	0.01	0.03
Pork	0.06	-0.17	-0.09	-0.12
Fish	0.15	-0.26	-0.12	0.01
High Incremental Cost:				
Fruits and Vegetables	0.43	-0.49	-0.62	-0.26
Cattle and Sheep	0.24	-0.33	-0.37	-0.08
Broilers	0.02	0.03	-0.00	0.03
Hogs	0.07	-0.15	-0.16	-0.03
Beef and Lamb	0.27	-0.34	-0.40	-0.25
Chicken	0.11	0.07	-0.07	0.16
Pork	0.26	-0.39	-0.48	-0.08
Fish	0.64	-0.92	-1.04	0.22

Fish and fruit and vegetables are affected relatively more than the other covered commodities even though the increases in incremental costs summed over their entire supply chains are lower than the sum of the increases in incremental costs for the supply chains of the other covered commodities. This is because the demands for fruits and vegetables and fish are more responsive to changes in prices than are the demands for the other covered commodities.

Demand for U.S. fish production is particularly sensitive to increases in prices because in the model, U.S. fish suppliers have less of a competitive advantage over their foreign counterparts than do the U.S. suppliers of the other covered commodities. As a result, fish imports increase as a result of the estimated cost increases, causing U.S. production to fall more (one percent) than it would if imports of fish

had declined similar to imports of all the other covered commodities.

U.S. poultry suppliers are also affected by the proposed rule even though they are not directly covered by the rule. This is because consumers will substitute chicken for beef and pork when their prices increase relative to the price of chicken. Consequently, the increases in pork and beef prices cause consumer demand to shift towards chicken. The resulting increase in demand for chicken causes the price of both chicken and broilers and ultimately their production to increase.

To put these impacts in more meaningful terms, the percentage changes reported in Table 9 were converted into changes in current prices and quantities produced, imported, and exported (Table 10). The base values used for calculating these changes are the projected values for 2003 as reported in the USDA Agricultural Baseline Projections to 2012 (Ref. 38), except for

fish, which comes from Fisheries of the United States, 2001 (Ref. 23). The base values in Table 10 vary from those reported in Table 4 because they are derived from projected levels reported in the USDA Agricultural Baseline for 2003, while values in Table 4 represent actual reported values for 2002 as compiled by the USDA's National Agricultural Statistical Service. Baseline values were used to accommodate the structure of the model.

Increases in prices for all covered commodities are small, less than one cent per pound. Production changes are similarly small, less than 100 million pounds for all covered commodities except fresh fruit and vegetables, which under the high cost "shock" declines by over a billion pounds. The declines in production of cattle and hogs mirroring the declines in beef and pork production fall by less than 200,000 head.

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Table 10. Estimated Changes in U.S. Production, Prices, and Trade for Affected Commodities

Indicator	Units	Base	Low Cost Change	High Cost
U.S. Production				
Fruits & Vegetables	Mil. Lbs.	204,291	-306	-1,001
Cattle	Thous. Hd. ^a	33,978	-48	-112
Broilers	Mil. Hd. ^a	8,621	1	3
Hogs	Thous. Hd. ^a	99,194	-69	-149
Beef	Mil. Lbs.	25,755	-39	-88
Chicken	Mil. Lbs.	32,647	13	23
Pork	Mil. Lbs.	19,442	-33	-76
Fish ^b	Mil. Lbs.	10,204	-27	-94
U.S. Price				
Fruits & Vegetables	\$/Lb. ^c	0.14	0.0002	0.0006
Cattle	\$/Cwt.	74.00	0.0370	0.1776
Broilers	\$/Lb.	0.35	0.0000	0.0001
Hogs	\$/Cwt.	37.00	0.0185	0.0259
Beef	\$/Lb.	3.42	0.0024	0.0092
Chicken	\$/Lb.	1.60	0.0002	0.0018
Pork	\$/Lb.	2.69	0.0016	0.0070
Fish	\$/Lb. ^d	0.41	0.0006	0.0026
U.S. Exports				
Fruits & Vegetables	Mil. Lbs.	60,856	-103	-377
Beef	Mil. Lbs.	2,530	-3	-10
Chicken	Mil. Lbs.	5,450	1	-4
Pork	Mil. Lbs.	1,620	-3	-8
Fish	Mil. Lbs.	2,565	-7	-27
U.S. Imports				
Fruits & Vegetables	Mil. Lbs.	89,186	-178	-232
Beef	Mil. Lbs.	3,305	-3	-8
Chicken	Mil. Lbs.	0	n.a	n.a
Pork	Mil. Lbs.	1,080	-1	-1
Fish	Mil. Lbs.	4,102	0	9

Sources: Base values for meat and fruits and vegetables come from USDA Agricultural Baseline Projections to 2012, Staff Report WAOB-2003-1. USDA, Office of the Chief Economist, 2003. Changes are derived from applying percentage changes obtained from the ERS CGE model to the base values. ^a Live animal estimates derived from baseline values for meat product using 2002 average dress weight for cattle, hogs and broilers. ^b Base values for fish come from Fisheries of the United States, 2001. National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 2002. ^c Fruit and vegetable price derived by dividing the total value of fruit and vegetable production by total quantity of fruit and vegetables produced as reported in USDA baseline for 2003. ^d Fish price derived by dividing total value of commercial and aquaculture production, excluding other, by total commercial and aquaculture production.

The estimated changes in prices and production cause revenues for the fruit and vegetable industry to decline an estimated \$12 million to \$18 million. The estimated changes in production and prices cause revenues to beef cattle producers to fall \$28 million and revenues from production and sale of beef to fall an estimated \$70–\$62 million dollars. In addition, revenues to hog production fall slightly, down \$2 million to \$8 million and revenues from production and sale of pork fall \$58 million to \$68 million. Finally, revenues to the fish industry fall \$5 million to \$12 million.

While revenues to the suppliers of the covered commodities fall, revenues to broiler and chicken suppliers increase. This is because the quantity of chicken demanded increases as consumers reduce their consumption of beef and pork in response to the increase in prices. The resulting changes in chicken and broiler production and prices, however, are relatively small (Table 10). The increase in both chicken and broiler prices is less than one cent, while broiler production increases by up to 1 million birds and chicken production increases by up to 23 million pounds. The increases in prices and production will cause revenues for broiler production to increase by an estimated \$3 million to \$8 million and revenues from chicken production to increase an estimated \$26 to \$94 million.

The increase in the prices of all affected commodities (except for fish) causes both exports and imports to decline (Table 10). Although these declines are small, they are for the most part smaller than the declines in U.S. production of these commodities, except for chicken where U.S. production increases.

The results presented here are based on one possible modeling framework. Consequently, the results depend on the representation of supply and demand relationships embedded in the ERS CGE model. Other types of modeling frameworks likely would yield different results. Unless these frameworks, however, are comprehensive in their coverage of both covered commodities and the linkages of these industries to the rest of the U.S. and world economy, their results would only represent the outcomes from a partial or incomplete adjustment of the economy to COOL. While their analysis may be useful for identifying the key factors for determining how specific industries or sub-sectors would be affected, they would not be useful for determining the effects of COOL on these industries and sub-sectors after the U.S. economy has completely adjusted.

Other CGE models that are as detailed in their coverage of the covered commodities as the ERS model may also provide different results than the ones presented here. In particular, the direction of change in the prices received by hog, cattle and fruit and vegetable producers may change if these models make a different assumption about the ability of firms to influence input and output prices. The ERS CGE model assumes that firms behave as though they have no influence on either their input or output prices. On the other hand, for example, a model that assumed that processors could influence their input and output prices could find that prices received by agricultural producers decreased because processors passed their cost increases down to their suppliers rather than increase the price they charged their customers.

Finally, the estimates of the economic impact of the proposed rule on the United States are based on the assumption that country of origin labeling does not shift consumer demand toward the covered commodities of U.S.-origin. This assumption is based on the earlier finding that there was no compelling evidence to support the view that mandatory country of origin labeling will increase the demand for U.S. products. Despite this lack of evidence, we examined how much of a shift or increase in demand for U.S.-origin labeled commodities would have to occur to offset the costs imposed on the economy by the proposed rule. We found that consumer demand for the covered commodities would have to increase from 0.4 percent to 2.1 percent to offset the costs to the economy of COOL as outlined in the proposed rule.

The 0.4 percent to 2.1 percent increase in demand for covered commodities represents the overall increase in demand from all outlets. If there were such a demand increase for domestically produced covered commodities, however, it would presumably occur at those retailers required to provide country of origin information. As previously discussed, USDA estimates the percentage share of covered commodities sold by retailers subject to this proposed rule at 41.4 percent of total consumption. This suggests that demand at covered retailers actually would have to increase by 1 percent to 5.1 percent, assuming no change in demand at other domestic outlets or in export demand.

As previously mentioned, our estimates of the overall economic effects of the proposed rule are derived from a CGE model developed by ERS. The results from this model show the

changes in production and consumption patterns after the economy has adjusted to the incremental increase in costs (medium run results). In reality, such changes occur over time and the economy does not adjust instantaneously.

The results of this analysis describe and compare the old production and consumption patterns to the new ones, but do not reflect any particular adjustment process. In addition, these results assume that the only changes that are occurring in the agriculture sector or the economy as a whole are those that are driven by COOL. The purpose of using the ERS CGE model is not to forecast what prices and production will be over any particular time frame, but to explore the implications of COOL on the U.S. economy and capture the direction of the changes.

The ERS CGE model is global in the sense that all regions in the world are covered. Production and consumption decisions in each region are determined within the model following behavior that is consistent with economic theory. Multilateral trade flows and prices are determined simultaneously by world market clearing conditions. This permits prices to adjust to ensure that total demand equals total supply for each commodity in the world.

The general equilibrium feature of the model means that all economic sectors—agricultural and non-agricultural—are included. Hence, resources can move among sectors, thereby ensuring that adjustments in the feed grains and livestock sectors, for example, are consistent with adjustments in the processed sectors.

The model is static and this implies that gains (or losses) from stimulating (or inhibiting) investment and productivity growth are not captured. The model allows the existing resources to move among sectors, thereby capturing the effects of re-allocation of resources that results due to policy changes. However, because the model fixes total available resources it underestimates the long-run effects of policies on aggregate output.

The ERS CGE model uses data from the Global Trade Analysis Project (GTAP database, version 5.2). The database represents the world as of 1997 and includes information on macroeconomic variables, production, consumption, trade, demand and supply elasticities, and policy measures. The GTAP database includes 57 commodities and 76 country/regions. For this analysis, the regions were represented by the following country/regions: the United States, Canada,

Mexico, the European Union-15 (EU), Japan, Australia and New Zealand, South America (including Central America), and the rest of the World. The agricultural sector is subdivided into the following eight commodity aggregations: food grains (rice, wheat), feed grains (corn, barley, sorghum), oil crops (oilseeds, peanuts), vegetables and fresh fruits, other crops (sugar, cotton), bovine cattle and sheep, hogs and poultry. The non-agricultural sector is subdivided into the following seven commodity aggregations, cattle and sheep meats (beef, veal, lamb and mutton), pork, chicken, vegetable oils and fats, other processed food products, beverages and tobacco, and fish. The remaining sectors in the database were aggregated into one broad category of manufacturing.

Regulatory Flexibility Analysis

This proposed rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*). The purpose of RFA is to consider the economic impact of a proposed rule on small businesses and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace. AMS believes that this rule will have a significant economic impact on a substantial number of small entities. As such, AMS has prepared the following regulatory analysis of the rule's likely economic impact on small entities pursuant to the RFA.

The proposed rule is the direct result of statutory obligations to implement the COOL provisions of the Farm Bill, which amended the Act by adding Subtitle D—Country of Origin Labeling.

The COOL provisions of the Farm Bill require USDA to issue regulations to implement a mandatory COOL program not later than September 30, 2004. The intent of this law is to provide consumers with additional information on which to base their purchasing decisions. Specifically, the law imposes additional Federal labeling requirements for covered commodities. Covered commodities include muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities (fresh and frozen fruits and vegetables); and peanuts.

Under current Federal laws and regulations, country of origin labeling is not universally required for the commodities covered by this rule. In particular, labeling of U.S. origin is not mandatory, and labeling of imported

products at the consumer level is required only in certain circumstances. Thus, USDA has not identified any Federal rules that would duplicate or overlap with this proposed rule.

Many aspects of the mandatory COOL provisions are prescriptive and provide little regulatory discretion in rulemaking. The law requires a statutorily defined set of food retailers to label the country of origin of covered commodities. The law also prohibits USDA from using a mandatory identification system to verify the country of origin of covered commodities. However, the proposed rule provides flexibility in allowing market participants to decide how best to implement mandatory COOL in their operations. In addition, market participants other than those retailers defined by the statute may decide to sell products through marketing channels not subject to the proposed rule.

The objective of the proposed rule is to regulate the activities of retailers (as defined by the law) and their suppliers so that retailers will be able to fulfill their statutory obligations. The proposed rule requires retailers to provide country of origin information for all the covered commodities that they sell. It also requires all firms that supply covered commodities to these retailers to provide the retailers with the information needed for them to correctly label the covered commodities. In addition, all other firms in the supply chain for the covered commodities are potentially affected by the proposed rule, because country of origin information will need to be maintained and transferred along the entire supply chain. In general, the supply chains for the covered commodities consist of farms, fishing operations, processors, wholesalers, and retailers. A listing of the number of entities in the supply chains for each of the covered commodities can be found in Table 1.

Retailers covered by this proposed rule must meet the definition of a retailer as defined by PACA. The PACA definition includes only those retailers handling fresh and frozen fruits and vegetables with an invoice value of at least \$230,000 annually. Therefore, the number of retailers impacted by this rule is considerably smaller than the total number of retailers nationwide. In addition, there is no requirement that firms in the supply chain must supply their products to retailers subject to the proposed rule.

Because country of origin information will have to be passed along the supply chain and made available to consumers at the retail level, we assume that each participant in the supply chain as

identified in Table 1 will likely encounter recordkeeping costs as well as changes or modifications to their business practices. Absent more detailed information about each of the entities within each of the marketing channels, USDA assumes that all such entities will be affected to some extent even though some producers and suppliers may choose to market their products through channels not subject to the requirements of this proposed rule. Therefore, USDA estimates that approximately 1,377,000 establishments owned by approximately 1,339,000 entities will be either directly or indirectly impacted by this rule.

This proposed rule potentially will have an impact on all participants in the supply chain, although the nature and extent of the impact will depend on the participant's function within the marketing chain. The rule likely will have the greatest impact on retailers and intermediaries (handlers, processors, wholesalers, and importers), while the impact on individual producers is likely to be relatively small.

USDA estimates direct incremental costs for the proposed rule will likely range from a total of \$582 million to \$3.9 billion.

There are two measures used by the Small Business Administration (SBA) to identify businesses as small: sales receipts or number of employees. In terms of sales, SBA classifies as small those grocery stores with less than \$23 million in annual sales and specialty food stores with less than \$6 million in annual sales (13 CFR 121.201). Warehouse clubs and superstores with less than \$23 million in annual sales are also defined as small. SBA defines as small those agricultural producers with less than \$750,000 in annual sales and fishing operations with less than \$3.5 million in annual sales. Of the other businesses potentially impacted by the proposed rule, SBA classifies as small those manufacturing firms with less than 500 employees and wholesalers with less than 100 employees.

Retailers: While there are many potential retail outlets for the covered commodities, food stores, warehouse clubs, and superstores are the primary retail outlets for food consumed at home. In fact, food stores, warehouse clubs, and superstores account for 82.5 percent of all food consumed at home (Ref. 29). Therefore, the number of these stores provides an indicator of the number of entities potentially impacted by this proposed rule. The 1997 Economic Census (Ref. 39) shows there were 67,916 food store, warehouse club, and superstore firms operated for the entire year. Most of these firms,

however, would not be subject to the requirements of this proposed rule.

Retailers covered by this proposed rule must meet the definition of a retailer as defined by PACA. The number of such businesses is estimated from PACA data (Ref. 18). The PACA definition of a retailer includes only those retailers handling fresh and frozen fruits and vegetables with an invoice value of at least \$230,000 annually. Therefore, the number of retailers impacted by this rule is considerably smaller than the number of food retailers nationwide. USDA data indicate that there are 4,512 retail firms as defined by PACA that would thus be subject to the proposed rule. As explained below, most small food store firms have been excluded from mandatory COOL based on the PACA definition of a retailer.

The 1997 Economic Census data provide information on the number of food store firms by sales categories. Of the 67,916 food store, warehouse club, and superstore firms, USDA estimates that there are 66,868 firms with annual sales meeting the SBA definition of a small firm and 1,048 other firms. USDA has no information on the identities of these firms, and the PACA database does not identify firms by North American Industry Classification System code that would enable matching with Economic Census data. USDA assumes, however, that all or nearly all of the 1,048 large firms would meet the definition of a PACA retailer because most of these larger food retailers likely would handle fresh and frozen fruits and vegetables with an invoice value of at least \$230,000 annually. Thus, USDA estimates that 77 percent (3,464 out of 4,512) of the retailers subject to the proposed rule are small. However, this is only 5.2 percent of the estimated total number of small food store retailers. In other words, an estimated 94.8 percent of small food store retailers would not be subject to the requirements of the proposed rule.

USDA estimates retailer costs under the proposed rule from a low of \$224 million to a high of \$1.8 billion. Costs per retail firm are estimated to range from a low of \$49,581 to a high of \$396,089. At the low end of the range of estimates, additional costs arise from setting up and maintaining a recordkeeping system, which USDA expects will be accomplished by modification of businesses' current recordkeeping systems. Average startup costs for setting up such recordkeeping systems are estimated at \$1,309 and recurring costs are estimated at \$48,272 per retail firm. On an establishment basis, average startup costs are

estimated at \$159 and recurring costs are estimated at \$5,859 per retail establishment. At the high end of the range, implementation costs are estimated at \$48,073 per retail establishment. Costs at the upper range of the range of estimates cannot be disaggregated into startup and recurring costs, but rather represents total first-year costs associated with implementation of the proposed rule. Retailers will face recordkeeping costs, costs associated with supplying country of origin information to consumers, costs associated with segmenting products by country of origin, and possibly additional handling costs. These cost increases may result in changes to retailer business practices. The proposed rule does not specify the systems that affected retailers must put in place to implement mandatory COOL. Instead, retailers will be given flexibility to develop their own systems to comply with the proposed rule. There are many ways in which the proposed rule's requirements may be met and firms will likely choose the least cost method in their particular situation to comply with the proposed rule.

Wholesalers: Any establishment that supplies retailers with one or more of the covered commodities will be required by retailers to provide country of origin information so that retailers can accurately supply that information to consumers. Of wholesalers potentially impacted by the proposed rule, SBA defines those having less than 100 employees as small. Importers of covered commodities will also be impacted by the proposed rule and are categorized as wholesalers in the data.

The 2000 Statistics of U.S. Businesses (Ref. 9) provides information on wholesalers by employment size. For meat and meat products wholesalers there is a total of 3,185 firms. Of these, 3,057 firms have less than 100 employees. This provides information that indicates that approximately 96 percent of meat wholesalers are considered as small firms using the SBA definition.

For fish and seafood wholesalers there are a total of 2,897 firms. Of these, 2,837 firms have less than 100 employees. Therefore, approximately 98 percent of the fish and seafood wholesalers could be considered as small firms.

For fresh fruit and vegetable wholesalers there are a total of 5,355 firms. Of these, 5,113 firms have less than 100 employees, resulting in approximately 95 percent of the fresh fruit and vegetable wholesalers being classified as small businesses.

In addition to specialty wholesalers that primarily handle a single covered

commodity, there are also general-line wholesalers that handle a wide range of products. We assume that these general-line wholesalers likely handle at least one and possibly all of the covered commodities. Therefore, we include the number of general-line wholesale businesses among entities affected by the proposed rule.

The 2000 Statistics of U.S. Businesses provides information on general-line grocery wholesalers by employment size. There were 3,183 firms in total, and 2,983 firms had less than 100 employees. This results in approximately 94 percent of the general-line grocery wholesalers being classified as small businesses.

In general, over 94 percent of the wholesalers are classified as small businesses. This indicates that most of the wholesalers impacted by mandatory COOL may be considered as small entities as defined by SBA.

USDA estimates that intermediaries (importers and domestic wholesalers, handlers, and processors) will incur costs under the proposed rule ranging from a low of \$123 million to a high of \$1.517 billion. Costs per intermediary firm are estimated to range from a low of \$4,048 to a high of \$50,086. As with retailers, lower-range costs for intermediaries arise from setting up and maintaining a recordkeeping system. Average startup costs for setting up such recordkeeping systems are estimated at \$1,309 and recurring costs are estimated at \$2,739 per intermediary firm. Average startup costs are estimated at \$1,113 and recurring costs are estimated at \$2,330 per intermediary establishment. At the high end of the range, implementation costs are estimated at \$42,602 per intermediary establishment. Costs at the upper range of estimates cannot be disaggregated into startup and recurring costs, but rather represent total first year costs associated with implementation of the proposed rule.

Wholesalers will encounter increased costs in complying with the mandatory COOL. Wholesalers will likely face increased recordkeeping costs, costs associated with supplying country of origin information to retailers, costs associated with segmenting products by country of origin, and possibly additional handling costs. Some of the comments received on the voluntary guidelines (67 FR 63367) from wholesalers and retailers have indicated that retailers may choose to source covered commodities from a single supplier that procures the covered commodity from only one country in an attempt to minimize the costs associated with complying with mandatory COOL. These changes in business practices

could lead to the further consolidation of firms in the wholesaling sector. The proposed rule does not specify the systems that affected wholesalers must put in place to implement mandatory COOL. Instead, wholesalers will be given flexibility to develop their own systems to comply with the proposed rule. There are many ways in which the proposed rule's requirements may be met. In addition, wholesalers have the option of supplying covered commodities to retailers or other suppliers that are not covered by the proposed rule.

Manufacturers: Any manufacturer that supplies retailers or wholesalers with a covered commodity will be required by retailers to provide country of origin information to retailers so that the information can be accurately supplied to consumers. Most manufacturers of covered commodities will likely print country of origin information on retail packages supplied to retailers. Of the manufacturers potentially impacted by the proposed rule, SBA defines those having less than 500 employees as small.

The 2000 Statistics of U.S. Businesses (Ref. 9) provides information on manufacturers by employment size. For livestock processing and slaughtering there is a total of 3,098 firms. Of these, 2,981 firms have less than 500 employees. This suggests that 96 percent of livestock processing and slaughtering operations would be considered as small firms using the SBA definition.

For seafood product preparation and packaging there is a total of 741 firms. Of these, 714 have less than 500 employees and thus, 96 percent are considered to be small firms.

For frozen fruit, juice, and vegetable manufacturers there is a total of 163 firms. There are 131 of these firms that are considered to be small. This suggests that 80 percent of the frozen fruit, juice, and vegetable manufacturers would be considered as small using the SBA definition.

There are a total of 140 roasted nuts and peanut butter manufacturers. Of these 140 firms, 121 could be considered as small. This results in 86 percent of the operations being considered small.

In general, approximately 95 percent of the manufacturers are classified as small businesses. This indicates that most of the manufacturers of covered commodities impacted by the proposed rule would be considered as small entities as defined by SBA.

Manufacturers are included as intermediaries and additional costs for these firms are discussed in the

previous section addressing wholesalers. Manufacturers of covered commodities will encounter increased costs in complying with the mandatory COOL. Manufacturers like wholesalers will likely face increased recordkeeping costs, costs associated with supplying country of origin information to retailers, costs associated with segmenting products by country of origin, and possibly additional handling costs. Some of the comments received on the voluntary guidelines (67 FR 63367) from manufacturers have indicated that they may limit the number of sources from which they procure raw products. These changes in business practices could lead to the further consolidation of firms in the manufacturing sector. The proposed rule does not specify the systems that affected manufacturers must put in place to implement mandatory COOL. Instead, manufacturers will be given flexibility to develop their own systems to comply with the proposed rule. There are many ways in which the proposed rule's requirements may be met.

Producers: Producers of the covered commodities fish, perishable agricultural commodities, and peanuts are directly impacted by this proposed rule. Producers of cattle, hogs, and sheep, while not directly covered by this rule will nevertheless be impacted because covered meat commodities are produced from livestock. Whether directly or indirectly impacted, these producers will more than likely be required by handlers and wholesalers to create and maintain country of origin information and transfer it to them so that they can readily transfer this information to retailers.

SBA defines a small agricultural producer as having annual receipts less than \$750,000. The 1997 Census of Agriculture (Ref. 16) shows there are 1,011,809 farms that raise beef cows, and USDA estimates that 20,696 of these have annual receipts greater than \$750,000. Thus, at least 98 percent of these beef cattle farms would be classified as small businesses according to the SBA definition. Similarly, an estimated 93 percent of hog farms would be considered as small and an estimated 99 percent of sheep and lamb farms would be considered as small.

Based on 1997 Census of Agriculture information, 92 percent of vegetable farms, 94 percent of fruit, nut, and berry farms, and 91 percent of peanut farms could be classified as small.

Based on 1998 Census of Aquaculture data, USDA estimates that at least 90 percent of fish and shellfish farming operations are small.

Similar information on fishing operations is not known to exist. However, it is assumed that the majority of these producers would be considered as small businesses.

At the production level, agricultural producers and fish harvesters will need to create, if necessary, and maintain records to establish country of origin information for the products they sell. This information will need to be conveyed as the products move through the supply chains. In general, additional producer costs include the cost of establishing and maintaining a recordkeeping system for the country of origin information, animal or product identification, and labor and training. Based on USDA's knowledge of the affected industries as well as comments received on the voluntary guidelines (67 FR 63367), USDA believes that producers already have much of the information available that could be used to substantiate country of origin. Cattle, hog, and lamb and sheep producers may have a slightly larger burden for recordkeeping than fruit, vegetable, and peanut producers because animals can be born in one country and fed and slaughtered in another country.

The costs for producers are expected to be relatively limited and should not have a larger impact on small producers than large producers. Producer costs are estimated to range from \$235 million to \$578 million, or an estimated \$180 to \$443 per firm. As with other affected businesses, lower-range costs for producers arise from setting up and maintaining a recordkeeping system. Average startup costs for setting up such recordkeeping systems are estimated at \$60 and recurring costs are estimated at \$121 per producer operation. In the case of producers, the firm and the establishment are considered as one and the same, with the exception of a small number of fishing operations. Thus, costs per firm and per establishment are the same after rounding to the nearest dollar. At the high end of the range, implementation costs are estimated \$443 per producer operation. Costs at the upper range of estimates cannot be disaggregated into startup and recurring costs, but rather represent total first year costs associated with implementation of the proposed rule.

Economic impact on small entities: Information on sales or employment is not available for all firms or establishments shown in Table 1. However, it is reasonable to expect that this proposed rule will have a substantial impact on a number of small businesses. At the wholesale and retail levels of the supply chain, the efficiency of these operations may be impacted as

products are segregated in receiving, storage, processing, and shipping operations. For packers and processors handling products from multiple origins, there may also be a need to operate separate shifts for processing products from different origins, or to split processing within shifts. In either case, costs are likely to increase. Records will need to be maintained to ensure that accurate country of origin information is retained throughout the process and to permit compliance and enforcement reviews.

Even if only domestic origin products or products from a single country of origin are handled, there may be additional procurement costs to source supplies from a single country of origin. Additional procurement costs may include higher transportation costs due to longer shipping distances and higher acquisition costs due to supply and demand conditions for products from a particular country of origin, whether domestic or foreign.

These additional costs may result in a number of consolidations within the processor, manufacturer, and wholesaler sectors for these covered commodities. Also, to comply with the proposed rule, retailers may seek to limit the number of entities from which they purchase covered commodities.

Additional alternatives considered: As previously mentioned, the COOL provisions of the 2002 Farm Bill leaves very little regulatory discretion in defining who is directly covered by this rule. The law explicitly identifies those retailers required to provide their customers with country of origin information for covered commodities (namely, retailers as defined by PACA).

The law also requires that any person supplying a covered commodity to a retailer provide information to the retailer indicating the country of origin of the covered commodity. Again, the law provides no discretion regarding this requirement for suppliers of covered commodities to provide information to retailers.

The proposed rule has no mandatory requirement, however, for any firm other than statutorily defined retailers to make country of origin claims. In other words, no producer, processor, wholesaler, or other supplier is required to make and substantiate a country of origin claim provided that the commodity is not ultimately sold in the form of a covered commodity at the establishment of a retailer subject to the proposed rule. Thus, for example, a processor and its suppliers may elect not to maintain country of origin information nor to make country of origin claims, but instead sell products

through marketing channels not subject to the proposed rule. Such marketing alternatives include foodservice, export, and retailers not subject to the proposed rule. USDA estimates that 41.4 percent of U.S. food sales occur through retailers subject to the proposed rule, with the remaining 58.6 percent sold by retailers not subject to the proposed rule or sold as food away from home. Additionally, food product sales into export markets provide marketing opportunities for producers and intermediaries that are not subject to the provisions of the proposed rule.

The law provides no discretionary authority for granting differing implementation timetables that could be used to ease the burdens on small entities. The law states that retailers subject to the statute are to label covered commodities with country of origin information beginning September 30, 2004. For retailers to meet this requirement, their suppliers will need to provide the necessary information to the retailers on or before this date. Retailers and their suppliers also will need to have the information and records necessary to substantiate all country of origin claims ultimately made at subject retailers. In short, the supply chains for the covered commodities will need to have the necessary systems and records in place to enable valid, verifiable country of origin labeling by retailers of covered commodities beginning September 30, 2004.

The proposed rule does not dictate systems that firms will need to put in place to implement the proposed requirements. Thus, different segments of the affected industries will be able to develop their own least-cost systems to implement COOL requirements. For example, one firm may depend primarily on manual identification and paper recordkeeping systems, while another may adopt automated identification and electronic recordkeeping systems.

The proposed rule has no requirements for firms to report to USDA. Compliance audits will be conducted by USDA at firms' places of business. As stated previously, required records may be kept by firms in the manner most suitable to their operations and may be hardcopy documents, electronic records, or a combination of both. In addition, the proposed rule provides flexibility regarding where records may be kept. Such flexibility should reduce costs for small entities to comply with the proposed rule.

In effect, the proposed rule is a performance standard rather than a design standard. The proposed rule requires that covered commodities at

subject retailers be labeled with country of origin information, that suppliers of covered commodities provide such information to retailers, and that retailers and their suppliers maintain records and information sufficient to verify all country of origin claims. The proposed rule provides flexibility regarding the manner in which country of origin information may be provided by retailers to consumers. The proposed rule provides flexibility in the manner in which required country of origin information is provided by suppliers to retailers, and in the manner in which records and information are maintained to substantiate country of origin claims. Thus, the proposed rule provides the maximum flexibility practicable to enable small entities to minimize the costs of the proposed rule on their operations.

Paperwork Reduction Act

This proposed rule announces that AMS is requesting OMB approval for a new information collection and contains information collection provisions that are subject to review by OMB under PRA (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual recordkeeping burden.

Title: Recordkeeping and Records Access Requirements for Producers and Food Facilities.

OMB Number: 0581-new.

Type of Request: New collection.

Expiration Date: Three years from the date of approval.

Abstract: The country of origin labeling provision in the 2002 Farm Bill requires that specified retailers inform consumers as to the country of origin of covered commodities. This proposed rule requires that records and other documentary evidence used to substantiate an origin claim must, upon request, be made available to USDA representatives in a timely manner during normal business hours and at a location that is reasonable in consideration of the products and firm under review. Any person engaged in the business of supplying a covered commodity to a retailer (*i.e.*, including but not limited to growers, distributors, handlers, packers, and processors), whether directly or indirectly, must make country of origin information available to the retailer and must maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction, for a period of 2 years from the date of the transaction. For an imported covered commodity, the

importer of record as determined by CBP, must ensure that records: (1) Provide clear product tracking from the port of entry into the United States to the immediate subsequent recipient, and (2) substantiate country of origin claims and, if applicable, designations of wild or farm-raised and must maintain such records for a period of 2 years from the date of the transaction. Records and other documentary evidence (e.g., shipping receipt from central warehouse) relied upon at the point of sale to establish a product's country of origin and, if applicable, designation of wild or farm-raised, must be maintained at the point of sale or otherwise be reasonably available to any duly authorized representative of USDA at the facility for at least 7 days following the retail sale of the product. In addition, records which identify the

retail supplier, the product unique to that transaction, and the country of origin information, and, if applicable, designation of wild or farm-raised, must be maintained for a period of 2 years from the date the origin declaration is made at retail. Such records may be located at the retailer's point of distribution, or at a warehouse, central office or other off-site location.

Description of Recordkeepers: Individuals who supply covered commodities, whether directly to retailers or indirectly through other participants in the marketing chain, are required to establish and maintain country of origin information for the covered commodities and supply this information to retailers. As a result, producers, handlers, manufacturers, wholesalers, importers, and retailers of

covered commodities will be impacted by this proposed rule.

Burden: USDA estimates that approximately 1,377,000 establishments owned by approximately 1,339,000 firms would be either directly or indirectly impacted by this rule. In general, the supply chain for each of the covered commodities includes agricultural producers or fish harvesters, processors, wholesalers, importers, and retailers. Imported products may be introduced at any level of the supply chain. Other intermediaries, such as auction markets, may be involved in transferring products from one stage of production to the next. USDA estimates that the proposed rule's paperwork burden will be incurred by the number and types of firms and establishments listed in Table 11 of this document.

TABLE 11.—COSTS ASSOCIATED WITH PAPERWORK BURDEN

Type	Firms	Initial costs	Establishments	Maintenance costs	Total costs
Producers:					
Cattle & Calves	1,032,670	61,847,680	1,032,670	133,951,509	195,799,189
Sheep & Lambs	64,170	3,843,208	64,170	8,323,732	12,166,940
Hogs & Pigs	67,150	4,021,683	67,150	8,710,279	12,731,962
Farm-Raised Fish & Shellfish	3,540	212,014	3,540	459,187	671,201
Fishing	76,499	4,581,605	76,452	3,305,62	7,887,230
Fruits & Vegetables	47,596	2,850,574	47,596	1,967,230	4,817,804
Peanut Farming	12,221	731,928	12,221	505,116	1,237,045
Intermediaries:					
Stockyards, Dealers & Market Agencies	7,775	10,177,475	7,775	6,489,500	16,666,975
Livestock Processing & Slaughtering	3,098	4,055,282	3,358	56,055,927	60,111,209
Meat & Meat Product Wholesale	3,185	4,169,165	3,305	2,758,559	6,927,724
Seafood Product Preparation & Packaging	741	969,969	823	686,927	1,656,896
Fish & Seafood Wholesale	2,897	3,792,173	2,980	2,487,294	6,279,467
Frozen Fruit, Juice & Vegetable Mfg	163	213,367	257	214,508	427,875
Fresh Fruit & Vegetable Wholesale	9,026	11,815,034	12,879	10,749,617	22,564,651
Roasted Nuts & Peanut Butter Mfg	140	183,260	159	132,711	315,971
Peanut Wholesalers	83	108,647	83	69,277	177,924
General Line Grocery Wholesalers	3,183	4,166,547	3,993	3,332,807	7,499,354
Retailers	4,512	5,906,208	37,176	217,802,585	223,708,793
Totals:					
Producers	1,303,846	78,088,693	1,303,799	157,222,678	235,311,371
Handlers, Processors, & Wholesalers	30,291	39,650,919	35,612	82,977,128	122,628,047
Retailers	4,512	5,906,208	37,176	217,802,585	223,708,793
Grand Total	1,338,649	123,645,820	1,376,587	458,002,391	581,648,211

The impacted firms and establishments will broadly incur two types of costs. First, firms will incur initial or start-up costs to comply with the proposed rule. USDA assumes that initial costs will be borne by each firm, even though a single firm may operate more than one establishment. Second, enterprises will incur additional recordkeeping costs associated with storing and maintaining records on an ongoing basis. USDA assumes that these activities will take place in each establishment operated by each affected business.

With respect to initial recordkeeping costs, USDA believes that most producers currently maintain many of the types of records that would be needed to substantiate country of origin claims. However, producers do not typically record or pass along country of origin information to subsequent purchasers. Therefore, producers will incur some additional incremental costs to record, maintain, and transfer country of origin information to substantiate country of origin claims made at retail. Because much of the necessary recordkeeping is already developed

during typical farm, ranch, and fishing operations, USDA estimates that the incremental costs for producers to supplement existing records with country of origin information will be relatively small. Examples of initial or start-up costs would be any additional recordkeeping burden needed to record the required country of origin information and transfer this information to handlers, processors, wholesalers, or retailers.

USDA estimates that producers will need 4 hours to establish a system for organizing records to carryout the

purposes of these regulations. This additional time would be required to modify existing recordkeeping systems to incorporate any added information needed to substantiate country of origin claims. Although not all farm products ultimately will be sold at retail establishments covered by this proposed rule, USDA assumes that virtually all producers will wish to keep their marketing options as flexible as possible. Thus, USDA assumes that all producers of covered commodities or livestock (in the case of the covered meat commodities) will establish recordkeeping systems sufficient to substantiate country of origin claims. USDA also recognizes that some operations will require substantially more than 4 hours to establish their recordkeeping systems. In particular, USDA believes that livestock backgrounders, stockers, and feeders will face a greater burden in establishing recordkeeping systems. These types of operations will need to track country of origin information for animals brought into the operation as well as for animals sold from the operation, increasing the burden of substantiating country of origin claims. Conversely, operations such as fruit and vegetable farms that produce only U.S. products likely will require little if any change to their existing recordkeeping systems in order to substantiate country of origin claims. Overall, USDA believes that 4 hours represents a reasonable estimate of the average additional time that will be required across all types of producers.

For producers, USDA assumes that the added work needed to initially set up a recordkeeping system for country of origin information is primarily a bookkeeping task. This task may be performed by independent bookkeepers, or in the case of operations that perform their own bookkeeping, will require equivalent skills. The Bureau of Labor Statistics (BLS) (Ref. 40) publishes wage rates for bookkeepers, accounting, and auditing clerks. USDA assumes that this wage rate represents the cost for producers to hire an independent bookkeeper. In the case of producers who currently perform their own bookkeeping, USDA assumes that this wage rate represents the opportunity cost of the producers' time for performing these tasks. The January 2001 wage rate, the most recent data available, is estimated at \$11.94 per hour. For this analysis, an additional 25.4 percent is added to the wage rate to account for total benefits which includes social security, unemployment insurance, workers compensation, etc. The estimate of this additional cost to

employers is published by the BLS (Ref. 40). At 4 hours per firm and a cost of \$14.97 per hour, initial recordkeeping costs to producers are estimated at approximately \$78 million to modify existing recordkeeping systems in order to substantiate country of origin claims.

The recordkeeping burden on handlers, processors, wholesalers, and retailers is expected to be more complex than the burden most producers face. These operations will need to maintain country of origin information on the covered commodities purchased and subsequently furnish that information to the next participant in the supply chain. This will require adding additional information to a firm's bills of lading, invoices, or other records associated with movement of covered commodities from purchase to sale. Similar to producers, however, USDA believes that most of these operations already maintain many of the types of necessary records in their existing systems. Thus, USDA assumes that country of origin information will require only modification of existing recordkeeping systems rather than development of entirely new systems.

The Label Cost Model Developed for FDA by RTI International (Refs. 41 and 42) is used to estimate the cost of including additional country of origin information to an operation's records. USDA assumes a limited information, one-color redesign of a paper document will be sufficient to comply with the proposed rule's recordkeeping requirements. The number of hours required to complete the redesign is estimated to be 29 with an estimated cost at \$1,309 per firm. While the cost will be much higher for some firms and lower for others, USDA believes that \$1,309 represents a reasonable average cost for all firms. Based on this, USDA estimates that the initial recordkeeping costs to intermediaries such as handlers, processors, and wholesalers (importers are included with wholesalers) will be approximately \$40 million, and initial recordkeeping costs at retail will be approximately \$6 million.

The total initial recordkeeping costs for all firms are thus estimated at approximately \$124 million.

In addition to these one-time costs to establish recordkeeping systems, enterprises will incur additional recordkeeping costs associated with storing and maintaining records. These costs are referred to as maintenance costs in Table 11. Again, the marginal cost for producers to maintain and store any additional information needed to substantiate country of origin claims is expected to be relatively small.

For wild fish harvesters, fruit and vegetable producers, and peanut producers, country of origin generally is established at the time that the product is harvested, and thus there is no need to track country of origin information throughout the production lifecycle of the product. This group of producers is estimated to require an additional 4 hours a year, or 1 hour per quarter, to maintain country of origin information.

Compared to wild fish harvesters, fruit and vegetable producers, and peanut producers, USDA expects that fish farmers and livestock producers will incur higher costs to maintain country of origin information. Wild fish, fruits, vegetables, and peanuts are generally harvested once and then shipped by the producer to the first handler. In contrast, farm-raised fish and livestock can and often do move through several geographically dispersed operations prior to final sale for processing or slaughter. Cattle, for example, typically change ownership between 2 to 3 times before they are slaughtered and processed. Fish and livestock may be acquired from other countries by U.S. producers, complicating the task of tracking country of origin information. Because animals are frequently sorted and regrouped at various stages of production and may change ownership several times prior to slaughter, country of origin information will need to be maintained on animals as they move through their lifecycle. Thus, USDA expects that the recordkeeping burden for fish farmers and livestock producers will be higher than it will be for producers of other covered commodities. USDA estimates that these producers will require an additional 12 hours a year, or 1 hour per month, to maintain country of origin records. Again, this is an average for all enterprises. Some will require substantially more time, while others will require little additional time to maintain country of origin information.

USDA assumes that farm labor will primarily be responsible for maintaining country of origin information at producers' enterprises. NASS data (Ref. 43) are used to estimate average farm wage rates—\$8.62 per hour for livestock workers and \$8.24 per hour for other crops workers. Applying the rate of 25.4 percent to account for benefits results in an hourly rate of \$10.81 for livestock workers and \$10.33 for other crops workers. (Wage rates for fish workers were unavailable, so the average wage rate for livestock workers is used.) Assuming 12 hours of labor per year for livestock and farmed fish operations and 4 hours per year for all other

operations results in estimated total annual maintenance costs to producers of \$157 million.

USDA expects that intermediaries such as handlers, processors, and wholesalers will face higher costs per enterprise to maintain country of origin information compared to costs faced by producers. Much of the added cost is attributed to the larger average size of these enterprises compared to the average producer enterprise. In addition, these intermediaries will need to track products both coming into and going out of their businesses.

With the exception of livestock processing and slaughtering establishments, USDA estimates the maintenance burden hours for country of origin recordkeeping to be 52 hours per year per establishment. For this part of the supply chain, the recordkeeping activities are on-going and are estimated to require an additional hour a week. USDA expects, however, that livestock processing and slaughtering enterprises will experience a more intensive recordkeeping burden. These enterprises disassemble carcasses into many individual cuts, each of which must maintain its country of origin identity. In addition, businesses that produce ground beef, lamb, and pork may commingle product from multiple origins, requiring careful tracking and recordkeeping to substantiate the country of origin information provided to retailers. Maintenance of the recordkeeping system at these establishments is estimated to total 1,040 hours per establishment, or 20 hours per week.

Maintenance activities will include inputting, tracking, and storing country of origin information for each covered commodity. Since this is mostly an administrative task, USDA estimates the cost using the BLS wage rate for administrative support occupations (\$12.80 per hour with an additional 25.4 percent added to cover overhead costs for a total of \$16.05 per hour). This occupation category includes stock and inventory clerks and record clerks. Coupled with the assumed hours per establishment, the resulting total annual maintenance costs to handlers, processors, and wholesalers and other intermediaries are estimated at approximately \$83 million.

Retailers will need to supply country of origin information for each covered commodity sold at each store. Therefore, additional recordkeeping maintenance costs are believed to impact each establishment. Because tracking of the covered commodities will be done daily, USDA believes that an additional hour of recordkeeping

activities for country of origin information will be incurred daily at each retail establishment. This results in an estimated 365 additional hours per year per establishment. Using the BLS wage rate for administrative support occupations (\$12.80 per hour with an additional 25.4 percent added to cover overhead costs for a total of \$16.05 per hour) results in total estimated annual maintenance costs to retailers of \$218 million.

The total maintenance recordkeeping costs for all enterprises are thus estimated at approximately \$458 million.

The total first-year recordkeeping burden is calculated by summing the initial and maintenance costs. The total recordkeeping costs are estimated for producers at approximately \$235 million; for handlers, processors, and wholesalers at approximately \$123 million; and for retailers at approximately \$224 million. USDA estimates the total recordkeeping cost for all participants in the supply chain for covered commodities at \$582 million for the first year, with subsequent maintenance costs of \$458 million per year.

The recordkeeping burden estimated for the voluntary country of origin guidelines (67 FR 63367) was \$2 billion for the first year. There are several reasons that the estimated recordkeeping burden for this proposed rule is substantially lower. First, the estimated number of affected entities is fewer due to the use of less aggregated data to estimate the numbers of impacted firms and establishments. Second, the estimated wage rates are lower to reflect more accurately the types of work skills expected to be needed to implement and maintain the records needed for this proposed rule. Third, the estimated number of labor hours is reduced overall as a result of reassessing expected hours needed to carry out recordkeeping tasks associated with this proposed rule.

Annual Reporting and Recordkeeping Burden for the First Year (Initial): Public reporting burden for this initial recordkeeping set up is estimated to average 4.7 hours per year per individual recordkeeper.

Estimated Number of Firms Recordkeepers: 1,338,649.

Estimated Total Annual Burden: 6,224,671 hours.

Annual Reporting and Recordkeeping Burden (Maintenance): Public reporting burden for this recordkeeping storage and maintenance is estimated to average 24.2 hours per year per individual recordkeeper.

Estimated Number of Establishments Recordkeepers: 1,376,634.

Estimated Total Annual Burden: 33,294,392 hours.

AMS is committed to implementation of the Government Paperwork Elimination Act (GPEA) to provide the public with the option to submit or transact business electronically to the extent practicable. This new information collection has no forms and is only for recordkeeping purposes. Therefore, the provisions of an electronic submission alternative is not required by GPEA.

AMS is soliciting comments from all interested parties concerning these recordkeeping requirements. Comments are specifically invited on: (1) Whether the recordkeeping is necessary for the proper operation of this program, including whether the information would have practical utility; (2) the accuracy of USDA's estimate of the burden of the recordkeeping requirements, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the records to be maintained; and (4) ways to minimize the burden of the recordkeeping on those who are to maintain and/or make the records available, including the use of appropriate automated, electronic, mechanical, or other technological recordkeeping techniques or other forms of information technology. Comments concerning the recordkeeping requirements contained in this proposed rule should reference the date and page number of this issue of the **Federal Register** and should be sent to Country of Origin Labeling Program, Room 2092-S; Agricultural Marketing Service (AMS), USDA; STOP 0249; 1400 Independence Avenue, SW.; Washington, DC 20250-0249, or by facsimile to 202/720-3499, or by e-mail to cool@usda.gov.

Comments sent to the above location should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503. All responses to this action will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

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List of Subjects in 7 CFR Part 60

Agricultural commodities, Fish, Food labeling, Meat and meat products, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR chapter I is proposed to be amended by adding part 60 to read as follows:

PART 60—COUNTRY OF ORIGIN LABELING

Subpart A—General Provisions

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Subpart B—[Reserved]

Authority: 7 U.S.C. 1621 *et seq.*

Subpart A—General Provisions

Definitions

§ 60.101 Act.

Act means the Agricultural Marketing Act of 1946, (7 U.S.C. 1621 *et seq.*).

§ 60.102 AMS.

AMS means the Agricultural Marketing Service, United States Department of Agriculture.

§ 60.103 Beef.

Beef means meat produced from cattle, including veal.

§ 60.104 Canned.

Canned means packaged in a shelf-stable container including but not limited to cans, jars, flexible containers (*e.g.*, pouches), or semi-rigid containers.

§ 60.105 Consumer package.

Consumer package means any container or wrapping in which a covered commodity is enclosed for the delivery and/or display of such commodity to retail purchasers.

§ 60.106 Covered commodity.

- (a) *Covered commodity* means:
- (1) muscle cuts of beef (including veal), lamb, and pork;
 - (2) ground beef, ground lamb, and ground pork;
 - (3) farm-raised fish and shellfish (including fillets, steaks, nuggets, and any other flesh);
 - (4) wild fish and shellfish (including fillets, steaks, nuggets, and any other flesh);
 - (5) perishable agricultural commodities as defined by the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)); and
 - (6) peanuts;
- (b) Covered commodities are excluded from this part if the commodity is an ingredient in a processed food item.

§ 60.107 USDA.

USDA means the United States Department of Agriculture.

§ 60.108 Farm-raised fish.

Farm-raised fish means fish or shellfish that have been harvested in controlled or selected environments, including ocean-ranched (e.g., penned) fish and shellfish confined in managed beds; and fillets, steaks, nuggets, and any other flesh from a farm-raised fish or shellfish.

§ 60.109 Food service establishment.

Food service establishment means a restaurant, cafeteria, lunch room, food stand, saloon, tavern, bar, lounge, or other similar facility operated as an enterprise engaged in the business of selling food to the public. Similar food service facilities include salad bars, delicatessens, and other food enterprises located within retail establishments that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises.

§ 60.110 Ground beef.

Ground beef has the meaning given the term in 9 CFR 319.15(a), i.e., chopped fresh and/or frozen beef with or without seasoning and without the addition of beef fat as such, and containing no more than 30 percent fat, and containing no added water, phosphates, binders, or extenders.

§ 60.111 Ground lamb.

Ground lamb means comminuted lamb of skeletal origin that is produced in conformance with all applicable Food

Safety Inspection Service labeling guidelines.

§ 60.112 Ground pork.

Ground pork means comminuted pork of skeletal origin that is produced in conformance with all applicable Food Safety Inspection Service labeling guidelines.

§ 60.113 Hatched.

Hatched means emerged from the egg.

§ 60.114 Ingredient.

Ingredient means a component either in part or in full, of a finished retail food product.

§ 60.115 Lamb.

Lamb means meat, other than mutton (or yearling mutton), produced from sheep.

§ 60.116 Legibly.

Legibly means English language text that can be easily read by a consumer.

§ 60.117 Perishable agricultural commodity.

Perishable agricultural commodity means fresh and frozen fruits and vegetables of every kind and character that have not been manufactured into articles of food of a different kind or character and includes cherries in brine as defined by the Secretary in accordance with trade usages.

§ 60.118 Person.

Person means any individual, partnership, corporation, association, or other legal entity.

§ 60.119 Pork.

Pork means meat produced from hogs.

§ 60.120 Processed (for fish and shellfish).

Processed in the case of wild and farm-raised fish and shellfish means any process that effects substantial transformation as defined by the U.S. Bureau of Customs and Border Protection (CBP).

§ 60.121 Processed food item.

Processed food item means:

- (a) a retail item derived from a covered commodity that has undergone a physical or chemical change, and has a character that is different from that of the covered commodity; or

- (b) a retail item derived from a covered commodity that has been combined with: other covered commodities; or other substantive food components (e.g., chocolate, stuffing), resulting in a distinct retail item that is no longer marketed as a covered commodity, provided that the addition of components that enhance or represent further steps in the

preparation of the product for consumption, such as water, seasonings, sugars, or breeding would not in itself exclude a covered commodity from labeling under this subpart.

§ 60.122 Produced.

Produced means in the case of fresh and frozen fruits and vegetables, and peanuts means grown.

§ 60.123 Produced in any country other than the United States.

Produced in any country other than the United States means in the case of:

- (a) Beef, Pork, and Lamb: born, raised, and/or slaughtered outside the United States.
- (b) Farm-raised Fish and Shellfish: hatched, raised, harvested, and/or processed outside the United States, and the waters of the United States.
- (c) Wild Fish and Shellfish: harvested and/or processed outside the United States, and the waters of the United States, or by a vessel not registered in the United States.

- (d) Fresh and frozen fruits and vegetables: grown outside the United States.

- (e) Peanuts: grown outside the United States.

§ 60.124 Production step.

Production step means, in the case of:

- (a) Beef, pork and lamb: born, raised, and slaughtered.
- (b) Farm-raised fish and shellfish: hatched, raised, harvested, and processed.
- (c) Wild fish and shellfish: harvested and processed.

§ 60.125 Raised.

Raised means in the case of:

- (a) Beef, pork, and lamb: the period of time from birth until slaughter.
- (b) Farm-raised fish and shellfish: grown by means of aquaculture management techniques from the period of time from hatched to harvested.

§ 60.126 Retailer.

Retailer means any person licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)).

§ 60.127 Secretary.

Secretary means the Secretary of Agriculture of the United States or any person to whom the Secretary's authority has been delegated.

§ 60.128 Slaughter.

Slaughter means the point in which a livestock animal is prepared into meat products for human consumption.

§ 60.129 United States.

United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States, and the waters of the United States as defined in § 60.133.

§ 60.130 United States country of origin.

United States country of origin means in the case of:

(a) Beef: from animals born, raised, and slaughtered in the United States (including animals born and raised in Alaska and Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States).

(b) Lamb and pork: from animals born, raised, and slaughtered in the United States.

(c) Farm-raised fish and shellfish: from fish or shellfish hatched, raised, harvested, and processed in the United States.

(d) Wild-fish and shellfish: from fish or shellfish harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel.

(e) Fresh and frozen fruits and vegetables: from products grown in the United States.

(f) Peanuts: from products grown in the United States.

§ 60.131 U.S. flagged vessel.

U.S. flagged vessel means:

(a) Any vessel documented under chapter 121 of title 46, United States Code, or

(b) Any vessel numbered in accordance with chapter 123 of title 46, United States Code.

§ 60.132 Vessel flag.

Vessel flag means the country of registry for a vessel, ship, or boat.

§ 60.133 Waters of the United States.

Waters of the United States means those fresh and ocean waters contained within the 200-mile boundary of the Exclusive Economic Zone (EEZ) surrounding the United States.

§ 60.134 Wild fish and shellfish.

Wild fish and shellfish means naturally-born or hatchery-originated fish or shellfish released in the wild, and caught, taken, or harvested from non-controlled or non-selected waters or beds; and fillets, steaks, nuggets, and any other flesh from a wild fish or shellfish.

Country of Origin Notification**§ 60.200 Country of origin notification.**

In providing notice of the country of origin as covered by the Act, the following requirements shall be followed by retailers:

(a) *General.* Each covered commodity offered for sale individually, in a bulk bin, carton, crate, barrel, cluster, or consumer package shall bear a legible declaration of the country of origin as set forth in this regulation.

(b) *Exemptions.* Food service establishments as defined in § 60.109 are exempt from labeling under this subpart.

(c) *Exclusions.* A covered commodity is excluded from this subpart if it is an ingredient in a processed food item as defined in § 60.121.

(d) *Designation of Wild Fish and Farm-Raised Fish.* The notice of country of origin for fish and shellfish shall include and distinguish between wild and farm-raised fish and shellfish as those terms are defined in this regulation.

(e) *Labeling Covered Commodities of United States Origin.*

(1) A covered commodity may only bear the declaration of "Product of the U.S." at retail if it meets the definition of United States Country of Origin as defined in § 60.130.

(2) Products further processed or handled in a foreign country after meeting the requirements to be labeled as U.S. origin as defined in § 60.130 (e.g., born, raised, and slaughtered or grown) may bear the declaration of "Product of the U.S." at retail provided the identity of the product is maintained along with records to substantiate the origin claims and the claim is consistent with other applicable Federal requirements.

(f) *Labeling Imported Products.* Imported covered commodities for which origin has already been established as defined by this law (e.g., born, raised, slaughtered or grown), shall retain their origin, as determined by CBP at the time the product entered the United States, through retail sale.

(g) *Labeling Covered Commodities When the Product Has Entered the United States During the Production Process.*

(1) Beef, Lamb, Pork:

(i) If an animal was born and/or raised in country X prior to slaughter or further raising and slaughter in the United States, the resulting meat products derived from that animal shall be labeled at retail as being imported from country X and shall include the production step(s) occurring in the United States. Alternatively, such

products may be labeled to specifically identify the production step(s) occurring in the country other than the United States if the animal's identity was maintained along with records to substantiate the origin claims.

(ii) If an animal was born in country

X and raised in country Y prior to slaughter or further raising and slaughter in the United States, the resulting meat products derived from that animal shall be labeled at retail as being imported from country Y and shall include the production step(s) occurring in the United States.

Alternatively, such products may be labeled to specifically identify the production step(s) occurring in the country(ies) other than the United States if the animal's identity was maintained along with records to substantiate the origin claims.

(2) Wild fish and shellfish:

(i) If a covered commodity was harvested in the waters of the United States as defined in § 60.133 or by a U.S. flagged vessel and processed in country X or onboard a country X flagged vessel, the product shall be labeled at retail as product of country X. Alternatively, the product may also be labeled to include the production step occurring in the United States if the product's identity was maintained along with records to substantiate the origin claims. The covered commodity shall also be labeled at retail to indicate that it was derived from wild fish and/or shellfish.

(ii) If a covered commodity was harvested in country X and processed in the United States or aboard a U.S. flagged vessel, the product shall be labeled at retail as being imported from country X and processed in the United States. The covered commodity shall also be labeled at retail to indicate that it was derived from wild fish and/or shellfish.

(3) Farm-raised fish and shellfish:

(i) If a covered commodity was hatched in country X and raised, harvested, and/or processed in the United States, the product shall be labeled at retail as being imported from country X and shall include the production step(s) occurring in the United States. The covered commodity shall also be labeled at retail to indicate that it was derived from farm-raised fish and/or shellfish.

(ii) If a covered commodity was hatched, raised, and harvested in the United States and processed in country X, the product shall be labeled at retail as product of country X. Alternatively, the product may also be labeled to include the production step occurring in the United States if the product's identity was maintained along with

records to substantiate the origin claims. The covered commodity shall also be labeled at retail to indicate that it was derived from farm-raised fish and/or shellfish.

(h) *Blended Products.* For commingled or blended retail food items comprised of the same covered commodity (e.g., bagged lettuce, ground beef, shrimp) that are prepared from raw material sources having different origins, the label shall list alphabetically the countries of origin (as set forth in these regulations) for all raw materials contained therein.

(i) *Remotely Purchased Products.* For sales of a covered commodity in which the customer purchases a covered commodity prior to having an opportunity to observe the final package (e.g., Internet sales, home delivery sales, etc.), the retailer shall provide the country of origin notification at the time the product is delivered to the consumer.

§ 60.300 Markings.

(a) Country of origin declarations can either be in the form of a placard, sign, label, sticker, or other format that allows consumers to identify the country of origin and, if applicable, designation of wild or farm-raised, of particular covered commodities. The declaration of the country of origin of a product may be in the form of a statement such as "Product of USA," "Grown in Mexico," or may only contain the name of the country such as "USA" or "Mexico" provided it is in conformance with other existing Federal labeling laws.

(b) The declaration of the country of origin and, if applicable, the designation of wild or farm-raised, (e.g., placard, sign, label, sticker, band, twist tie, or other display) must be placed in a conspicuous location, so as to render it likely to be read and understood by a customer under normal conditions of purchase, and written in English; additional accompanying languages are permissible.

(c) The declaration of country of origin information and, if applicable, the designation of wild or farm-raised, may be typed, printed, or handwritten provided it is in conformance with other existing Federal labeling laws and does not obscure other labeling information required by existing Federal regulations.

(d) A bulk container (e.g., shipper, bin, carton, and barrel), used at the retail level to present product to consumers, may contain a covered commodity from more than one country of origin provided the covered commodity is individually labeled (e.g., PLU sticker).

(e) Abbreviations and variant spellings that unmistakably indicate the country of origin, such as "U.K." for "The United Kingdom of Great Britain and Northern Ireland" are acceptable. The adjectival form of the name of a country or region/city within a country may be used as proper notification of the country of origin of imported commodities provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. Symbols or flags alone may not be used to denote country of origin.

(f) State or regional label designations are not acceptable in lieu of country of origin labeling.

Recordkeeping

§ 60.400 Recordkeeping requirements.

(a) General.

(1) All records must be legible and written in English and may be maintained in either electronic or hard copy formats. Due to the variation in inventory and accounting documentary systems, various forms of documentation and records will be acceptable provided the chain of custody of the covered commodity can be determined and the origin claims, and, if applicable, designations of wild or farm-raised, substantiated.

(2) Upon request by USDA representatives, suppliers and retailers subject to this subpart shall make available to USDA representatives, records and other documentary evidence that will permit substantiation of an origin claim and, if applicable, designation of wild or farm-raised, in a timely manner during normal hours of business and at a location that is reasonable in consideration of the products and firm under review.

(b) Responsibilities of Suppliers.

(1) Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must make available information to the buyer about the country of origin and, if applicable, designation of wild or farm-raised, of the covered commodity. In addition, the supplier of a covered commodity that is responsible for initiating a country of origin declaration, which in the case of beef, lamb, and pork is the meat packing facility, and, if applicable, designation of wild or farm-raised, must possess or have legal access to records that substantiate that claim.

(2) Any intermediary supplier (i.e., not the supplier responsible for initiating a country of origin declaration, and if applicable, designation of wild or farm-raised)

handling a covered commodity that is found to be mislabeled for country of origin shall not be held liable for a violation of the Act by reason of the conduct of another if the intermediary supplier could not have been reasonably expected to have had knowledge of the violation from the information provided by the previous supplier.

(3) Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly (i.e., including but not limited to growers, distributors, handlers, packers, and processors), must maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction, for a period of 2 years from the date of the transaction.

(4) For an imported covered commodity, the importer of record as determined by CBP, must ensure that records: provide clear product tracking from the port of entry into the United States to the immediate subsequent recipient; and substantiate country of origin claims and, if applicable, designations of wild or farm-raised and must maintain such records for a period of 2 years from the date of the transaction.

(5) Each supplier that handles similar covered commodities from more than one country must be able to document that the origin of a product was separately tracked, while in their control, during any production and packaging processes to demonstrate that the identity of a product was maintained.

(c) Responsibilities of Retailers.

(1) Records and other documentary evidence (e.g., shipping receipt from central warehouse) relied upon at the point of sale to establish a product's country of origin and, if applicable, designation of wild or farm-raised, must be maintained at the point of sale or otherwise be reasonably available to any duly authorized representative of USDA at the facility for at least 7 days following the retail sale of the product.

(2) Records that identify the retail supplier, the product unique to that transaction, and the country of origin information and, if applicable, designation of wild or farm-raised, must be maintained for a period of 2 years from the date the origin declaration is made at retail. Such records may be located at the retailer's point of distribution, warehouse, central offices or other off-site location.

(3) Any retailer handling a covered commodity that is found to be mislabeled for country of origin shall

not be held liable for a violation of the Act by reason of the conduct of another if the retailer could not have been reasonably expected to have had knowledge of the violation from the information provided by the supplier.

(4) In construing and enforcing the provisions of the Act and the regulations contained in this part, the

act, omission, or failure of any agent, officer, or other person acting for or employed by a person subject to the provisions of the Act within the scope of his/her employment or office, shall in every case be deemed the act, omission, or failure of the person subject to these provisions.

Subpart B—[Reserved]

Dated: October 24, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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