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Federal Register

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 04–01]

RIN 1557–AC13

Electronic Filings

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting, in final form, without change, an interim rule that allows national banks to make any class of licensing filings electronically and clarifies the circumstances under which the OCC may adopt filing procedures different from those otherwise required by part 5. The rule also makes several technical changes related to the Comptroller's Licensing Manual (Manual).

EFFECTIVE DATE: This final rule is effective February 2, 2004.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Darrell Sheets, Licensing Data Manager, Licensing, Policy and Systems Division, (202) 874–5060, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

The OCC's ongoing objectives include minimizing regulatory burden for the national banks we supervise, consistent with safety and soundness, and achieving greater efficiency in the agency's regulatory processes. National banks' preparation of required licensing applications and filings and the OCC's processing of those submissions are activities where substantial efficiencies, including cost savings, can be achieved through increased use of electronic technology. Moreover, the Government Paperwork Elimination Act (GPEA)[1] requires that Federal agencies consider providing the public with the option of automated transactional processes that use and accept electronic filings and signatures, when practicable. The requirements of GPEA apply to all interactions with the Federal government that involve the electronic submission, maintenance, or disclosure of information.[2] This includes transactions—such as the electronic filings that are the subject of this final rule—that involve Federal information collections covered by the Paperwork Reduction Act (PRA).[3]

To further the objectives we have described and to facilitate compliance with GPEA, the OCC designed a new electronic filing system called e-Corp. E-Corp uses a Web-based electronic application to enable national banks to submit electronically certain types of corporate filings to the OCC for approval. Authorized users at each national bank access electronic forms through the OCC's National BankNet Web site (BankNet)[4] and submit electronically certain licensing filings to the OCC using electronic signatures. This final rule facilitates expansion of our electronic filing program.

II. The Interim and Final Rules

On April 14, 2003, the OCC published and requested comment on an interim rule amending 12 CFR part 5, which was published at 68 FR 17890. The comment period ended June 13, 2003, and no comments were received. Thus, the OCC is adopting the interim rule as a final rule with no modifications.

Accordingly, the final rule adopts revisions to § 5.2 to expressly provide that the OCC may permit national banks to make any class of licensing filings electronically. Four applications were available to be filed electronically at the time we published the interim rule: establishment of a branch, relocation of a branch, relocation of a main office within a 30-mile radius (within current city, town or village limits), and relocation of a main office within a 30-mile radius (outside current city, town or village limits). These four applications continue to be available for electronic filing. Five notices were added earlier this year, including notification of change of corporate title; notification of change of main office address; official 90-day advance branch closing and downgrade notice; final branch closing, consolidation, relocation, or downgrade notice; and notification of main office relocation to an existing branch. Additional electronic filings currently are under development. In recognition of the fact that national banks rely on technology to varying extents, electronic filing remains voluntary, as it was under the interim rule. Any bank that wishes to continue filing paper-based applications may do so.

The final rule also refers national banks to the Manual to find information about the filings that are available for electronic submission. The Manual, which is available on the OCC's Internet Web site,[5] is updated on a continuous basis.

The final rule also adopts amendments to § 5.2(b) of our rules to provide that, after giving appropriate notice to the applicant and, at the OCC's discretion, to others, the OCC may adopt materially different procedures for a particular filing, or a class of filings, in exceptional circumstances or unusual transactions.

Finally, the final rule adopts several technical changes regarding the Manual. In 2002, the OCC replaced the Comptroller's Corporate Manual with the Comptroller's Licensing Manual and made the Manual available on our Internet Web site. The final rule adopts changes regarding the new name of the Manual, provides the OCC's Internet address, and substitutes a new address to use to request a printed version of the Manual.

[1] 44 U.S.C. 3504 note.

[2] *See* OMB Memorandum M–00–10, ''OMB Procedures and Guidance; Implementation of the Government Paperwork Elimination Act,'' 65 FR 25508, May 2, 2000 (OMB Guidance).

[3] 44 U.S.C. 3501 *et seq.*

[4] BankNet is a secure, extranet Web site that allows the OCC to deliver data-based services via the Internet to the national banks we supervise.

[5] *See www.occ.treas.gov/corpapps/corpapplic.htm.* This is the Web address for the OCC's Home page, which contains information available to the general public. Printed copies of the Manual are available for a fee from the OCC's Communications Division.

III. Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).[6] Because the OCC was not required to publish, and did not publish, a general notice of proposed rulemaking,[7] the Regulatory Flexibility Act does not apply to this final rule.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–04 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the final rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 12866

The OCC has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

Paperwork Reduction Act

The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

This final rule adopts changes from the interim rule which, in § 5.2(d), permits the electronic filing of applications that contain collection of information requirements. These requirements are found in sections of 12 CFR part 5, Rules, Policies, and Procedures for Corporate Activities, such as §§ 5.30 (Establishment, acquisition, and relocation of a branch) and 5.40 (Change in location of main office). As part of the Manual, these collections of information have been reviewed and approved by the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB Control Number 1557–0014.

Effective Date

Subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. As we described in the preamble to the interim rule, the interim rule imposed no additional reporting, disclosure, or other new requirements on insured depository institutions. For that reason, we concluded that 12 U.S.C. 4802(b)(1) did not apply to the interim rule. That reasoning also applies to the final rule, which is identical to the interim rule. Accordingly, we conclude that the delayed effective date requirement of 12 U.S.C. 4802(b)(1) does not apply to the final rule.

List of Subjects in Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ Accordingly, the interim rule amending 12 CFR part 5 which was published at 68 FR 17890 on April 14, 2003, is adopted as a final rule without change.

Dated: December 23, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–32256 Filed 12–31–03; 8:45 am]

BILLING CODE 4810–33–P

[6] *See* 5 U.S.C. 601(2).

[7] *See* 5 U.S.C. 553(b)(A)(Administrative Procedure Act (APA) provision excepting from the notice and comment requirement ''rules of agency organization, procedure, or practice''); 68 FR 17891–92 (discussion of applicability of section 553(b)(A) to the interim rule).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–58–AD; Amendment 39–13402; AD 2003–26–05]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–8C1 Series and CF34—8C5 Series 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 General Electric Company (GE) CF34–8C1 series and CF34–8C5 series turbofan engines, with certain serial number (SN) master variable geometry (VG) actuators installed. This AD requires initial and repetitive reviews of the airplane Maintenance Data Computer (MDC) for master VG actuator fault messages, and if the MDC is inoperative, reviews of the Engine Indication and Crew Alerting System (EICAS) for fault messages. This AD also requires replacement of actuators reported faulty by the Full Authority Digital Engine Control (FADEC). This AD results from nine reports of master VG actuator electrical signal faults, one report of which was a dual-channel fault, resulting in the FADEC commanding the engine power to idle. We are issuing this AD to prevent VG master actuator dual-channel electrical signal faults:

- Which will cause an uncommanded reduction of thrust to idle with a subsequent loss of the ability to advance thrust above idle; and
- Could result in a multi-engine loss of thrust if dual-channel faults occur on more than one engine simultaneously.

DATES: This AD becomes effective January 20, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 20, 2004.

We must receive any comments on this AD by March 2, 2004.

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–58–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 General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422.

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: Robert Grant, Aerospace Engineer, Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA; telephone (781) 238–7757; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: In September of 2002, GE, the manufacturer of CF34–8C1 series and CF34–8C5 series turbofan engines replaced its supplier of dual-channel linear variable differential transformers (LVDTs), installed on the master VG actuator, P/N 4120T02P02. Since that changing of suppliers, nine master VG actuators with LVDTs produced by the new supplier have been reported with single-channel electrical signal faults sent to the MDC and to the FADEC. One of these master VG actuators also experienced a failure of the second LVDT channel seventeen days after the first single-channel fault report, resulting in the FADEC commanding the engine power to idle. The manufacturer's on-going investigation has revealed LVDT coil wire deformation and breakage, caused by thermal expansion of potting material. The affected master VG actuators are identified by SNs APM238AE, and SNs APM242AE and up. A dual channel LVDT failure that occurs at a certain phase of flight will result in a single engine loss of thrust control. VG master actuators with dual channel LVDT failures that occur simultaneously on multiple engines will cause a multi-engine loss of thrust control.

Relevant Service Information

We have reviewed and approved the technical contents of GE Alert Service Bulletin (ASB) No. CF34–8C–AL S/B 75–A0007, Revision 1, dated November 7, 2003, that describes procedures for initial and repetitive reviews of the airplane MDC for master VG actuator fault messages, and if the MDC is inoperative, reviews of the EICAS for fault messages, and replacement of actuators reported faulty by the FADEC.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other CF34–8C1 series and CF34–8C5 series turbofan engines of the same type design. We are issuing this AD to prevent VG master actuator dual-channel electrical signal faults:

• Which will cause an uncommanded reduction of thrust to idle with a subsequent loss of the ability to advance thrust above idle; and

• Could result in a multi-engine loss of thrust if dual-channel faults occur on more than one engine simultaneously.

This AD requires an initial review within 10 days after the effective date of the AD, of the airplane MDC for master VG actuator fault messages, and if the MDC is inoperative, a review of the EICAS for fault messages, and replacement of actuators reported faulty by the FADEC. This AD also requires the same reviews, repetitively, at intervals not to exceed 10 days, and replacement of actuators reported faulty by the FADEC either before further flight or within 10 days of the first fault occurrence, based on requirements defined in the service information described previously, for the actual fault reported. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

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 47998, 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–58–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 can 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–58–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:

2003–26–05 General Electric Company: Amendment 39–13402. Docket No. 2003–NE–58–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 20, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–8C1 series and CF34–8C5 series turbofan engines, with master variable geometry (VG) actuators, part number 4120T02P02, serial number (SN) APM238AE, and SNs APM242AE and up, installed. These engines are installed on, but not limited to, Bombardier Inc. Model CL–600–2C10 (CRJ–700 & 701) and CL–600–2D24 (CRJ–900) airplanes.

Unsafe Condition

(d) This AD results from nine reports of master VG actuator electrical signal faults, one report of which was a dual-channel fault, resulting in the Full Authority Digital Engine Control (FADEC) commanding the engine power to idle. We are issuing this AD to prevent VG master actuator dual-channel electrical signal faults:

(1) Which will cause an uncommanded reduction of thrust to idle with a subsequent loss of the ability to advance thrust above idle; and

(2) Could result in a multi-engine loss of thrust if dual-channel faults occur on more than one engine simultaneously.

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.

Initial Review

(f) Within 10 days after the effective date of this AD, initially review the Maintenance Data Computer (MDC) fault history, and if the MDC is inoperative, review the Engine Indication and Crew Alerting System (EICAS) for fault messages, and replace actuators with faults reported by the FADEC. Follow the review and replacement requirements of paragraph 3 of the Accomplishment Instructions of GE Alert Service Bulletin (ASB) No. CF34–8C–AL S/B 75–A0007, Revision 1, dated November 7, 2003.

Repetitive Review

(g) At intervals not to exceed 10 days, repetitively review the MDC fault history, and if the MDC is inoperative, review the EICAS for fault messages, and replace actuators with faults reported by the FADEC. Follow the review and replacement requirements of paragraph 3 of the Accomplishment Instructions of GE ASB No. CF34–8C–AL S/B 75–A0007, Revision 1, dated November 7, 2003.

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.

Special Flight Permits

(i) Under 39.23, the FAA imposes the following conditions and limitations on the issuance and use of Special Flight Permits for this AD:

(1) If both engines report FADEC fault 1 messages at the same time, whether intermittent or continuous, the MDC must be reviewed for master VG actuator faults before further flight. If actuator faults are still present for both engines, then at least one master VG actuator must be replaced before further flight.

(2) If a master VG actuator switches channels, the actuator must be replaced before further flight.

Material Incorporated by Reference

(j) You must use GE Alert Service Bulletin No. CF34–8C–AL S/B 75–A0007, Revision 1, dated November 7, 2003, to perform the reviews and actuator dispositions 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 General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. You may review copies at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Related Information

(k) None.

Issued in Burlington, Massachusetts, on December 17, 2003.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–31665 Filed 12–31–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4835–C–02]

RIN 2502–AI00

FHA TOTAL Mortgage Scorecard

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule; technical correction.

SUMMARY: On November 21, 2003, HUD published an interim rule to codify the procedures that mortgagees and automated underwriting system (AUS) vendors must observe if they opt to use the ''Technology Open To Approved Lenders'' mortgage scorecard offered by the Federal Housing Administration (FHA). This document corrects the interim rule by changing certain references to ''mortgage'' to read ''mortgagee'' and to remove ''FHA-approved'' as a modifier of ''AUS'' in a certain instance.

DATES: *Effective Date:* December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Room 9278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121. (This is not a toll-free number.) Hearing- or speech-impaired persons may access this number by calling the toll-free Federal Information Relay Service number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On November 21, 2003 (68 FR 65824), HUD published an interim rule providing requirements for the use of the ''Technology Open To Approved Lenders'' mortgage scorecard (TOTAL Mortgage Scorecard, or Scorecard). The preamble to this rule, in the third

column of page 65824, states: ''Only AUSs developed, operated, owned, or used by FHA-approved Direct Endorsement mortgages, Fannie Mae, or Freddie Mac will be able to access the scorecard, and only FHA-approved mortgagees will be able to obtain risk assessments using the TOTAL Mortgage Scorecard.'' The reference in this sentence to ''Direct Endorsement mortgages'' should have read ''Direct Endorsement mortgagees'' instead. A conforming change removing ''FHA-approved'' as a modifier of ''automatic underwriting systems (AUSs)'' and changing ''Direct Endorsement mortgages'' to ''Direct Endorsement mortgagees'' is also made to the regulation, at § 203.255(b)(5)(i)(A).

■ Accordingly, FR Doc. 03–29055, FHA TOTAL Mortgage Scorecard, (FR–4835–I–01), published in the **Federal Register** on November 21, 2003 (68 FR 65824), is corrected as follows:

■ 1. On page 65824, third column, the fourth complete sentence under the heading, ''II. This Interim Rule,'' is revised to read as follows: ''Only AUSs developed, operated, owned, or used by FHA-approved Direct Endorsement mortgagees, Fannie Mae, or Freddie Mac will be able to access the scorecard, and only FHA-approved mortgagees will be able to obtain risk assessments using the TOTAL Mortgage Scorecard.''

■ 2. On page 65827, second column, § 203.255(b)(5)(i)(A) is revised to read as follows:

§ 203.255 Insurance of mortgage.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(A) *Permissible users.* Only automatic underwriting systems (AUSs) developed, operated, owned, or used by FHA-approved Direct Endorsement mortgagees, Fannie Mae, or Freddie Mac, may access TOTAL, and only FHA-approved mortgagees will be able to obtain risk-assessments using TOTAL;

* * * * *

Dated: December 23, 2003.

Aaron Santa Anna,

Assistant, General Counsel for Regulations.

[FR Doc. 03–32021 Filed 12–31–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9105]

RIN 1545–BC17

Changes in Computing Depreciation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to a change in computing depreciation or amortization as well as a change from a nondepreciable or nonamortizable asset to a depreciable or amortizable asset (or vice versa). Specifically, these regulations provide guidance to any taxpayer that makes a change in depreciation or amortization on whether such change is a change in method of accounting under section 446(e) of the Internal Revenue Code and on the application of section 1016(a)(2) in determining whether the change is a change in method of accounting. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Dates:* These regulations are effective January 2, 2004.

Applicability Dates: For dates of applicability, *see* §§ 1.167(e)–1T(e), 1.446(e)–1T(e)(4), and 1.1016–3T(j).

FOR FURTHER INFORMATION CONTACT: Sara Logan or Douglas Kim, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 to provide regulations under sections 167, 446(e), and 1016(a)(2) of the Internal Revenue Code (Code). These regulations provide the changes in depreciation or amortization that are, and are not, a change in method of accounting under § 1.446–1(e). Additionally, these regulations amend § 1.167(e)–1 to provide that certain changes in depreciation method for property for which depreciation is determined only under section 167 are made without the consent of the Commissioner of Internal Revenue, and amend § 1.1016–3 to provide that section 1016(a)(2) does not permanently affect a taxpayer's lifetime income for purposes of determining whether a change in depreciation or amortization is a change in method of accounting.

Explanation of Provisions

Background

Section 446 provides in general that taxable income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes the taxpayer's income in keeping the taxpayer's books. Section 446(e) provides that, except as otherwise expressly provided in chapter 1 of the Code, a taxpayer who changes the method of accounting on the basis of which the taxpayer regularly computes the taxpayer's income in keeping the taxpayer's books shall, before computing the taxpayer's taxable income under the new method, secure the consent of the Secretary.

Section 1.446–1(e)(2)(ii)(a) provides in pertinent part that a change in method of accounting includes a change in the overall plan of accounting for gross income or deductions or a change in the treatment of any material item used in such overall plan. A material item is any item that involves the proper time for the inclusion of the item in income or the taking of a deduction. However, § 1.446–1(e)(2)(ii)(*b*) provides in pertinent part that a change in method of accounting does not include an adjustment in the useful life of a depreciable asset. Although such adjustment may involve the question of the proper time for the taking of a deduction, such item is traditionally corrected by adjustments in the current and future years.

Section 1.167(e)–1(a) provides that in general, any change in the method of computing the depreciation allowances with respect to a particular account (other than a change in method permitted or required by reason of the operation of former section 167(j)(2) and § 1.167(j)–3(c)) is a change in method of accounting, and such a change will be permitted only with the consent of the Commissioner, except that certain changes to the straight line method of depreciation will be permitted without consent as provided in former section 167(e)(1), (2), and (3). Any request for a change in method of depreciation shall be made in accordance with section 446 and the regulations under section 446.

In 1996, the IRS issued Rev. Proc. 96–31 (1996–1 C.B. 714), providing that a change from not claiming the depreciation or amortization allowable to claiming the depreciation or amortization allowable is a change in method of accounting for which the consent of the Commissioner of Internal Revenue is required.

In *Kurzet* v. *Commissioner,* 222 F.2d 830, 842–845 (10th Cir. 2000), the taxpayer sought to change the classification of property under section 168 from nonresidential real property to 15-year property thereby resulting in a change in recovery period from 31.5 years to 15 years. The Tenth Circuit held that a change in recovery period under section 168 is a change in method of accounting under section 446(e). In reaching its holding, the Tenth Circuit considered the taxpayer's argument that a change in recovery period is analogous to a change in useful life, but concluded that the Commissioner's interpretation of § 1.446–1(e)(2)(ii) in Rev. Proc. 96–31 as requiring a taxpayer to obtain permission for a change in recovery period is not plainly erroneous or inconsistent with § 1.446–1(e)(2)(ii).

In *Brookshire Brothers Holding, Inc. & Subsidiaries* v. *Commissioner,* 320 F.3d 507 (5th Cir. 2003), *aff'g.* T.C. Memo. 2001–150, *reh'g en banc denied,* 65 Fed. Appx. 511 (5th Cir. 2003), the Fifth Circuit held that a change in classification of property under section 168 is not a change in method of accounting under section 446(e) because the change is the functional equivalent of a change in useful life thereby resulting in the change falling under the useful life exception in § 1.446–1(e)(2)(ii)(*b*). The Eighth Circuit in *O'Shaughnessy* v. *Commissioner,* 332 F.3d 1125 (8th Cir. 2003), *rev'g in part* 2002–1 U.S.T.C. (CCH) ¶ 50,235 (D. Minn. 2001), adopted the analysis in *Brookshire* and held that a change in classification of property under section 168 falls within the useful life exception and, thus, does not constitute a change in method of accounting under section 446(e).

Further, in *Green Forest Manufacturing Inc.* v. *Commissioner,* T.C.Memo. 2003–75, the Tax Court extended its reasoning in *Brookshire.* The court held that a change in computing depreciation from the general depreciation system in section 168(a) to the alternative depreciation system in section 168(g) is a change in classification that falls within the useful life exception and, therefore, is not a change in method of accounting.

As a result of these decisions, there is inconsistent treatment of taxpayers with respect to whether a change in computing depreciation under section 168 is a change in method of accounting under section 446(e). These regulations clarify the changes in depreciation or amortization (depreciation) that are (and are not) changes in method of accounting under section 446(e).

Scope

The regulations provide the changes in depreciation for property for which depreciation is determined under section 167, 168, 197, 1400I, 1400L(b), or 1400L(c), or former section 168, of the Code that are (and are not) changes in method of accounting under section 446(e). The regulations also clarify that the rules in § 1.167(e)–1 with respect to a change in the depreciation method made without the consent of the Commissioner apply only to property for which depreciation is determined under section 167 (other than under section 168, section 1400I, section 1400L, or former section 168).

Changes in Depreciation That Are Changes in Method of Accounting

In general, the regulations provide that a change in the depreciation method, period of recovery, or convention of a depreciable or amortizable asset is a change in method of accounting. This change may be the result of, for example, a change in the classification of property under section 168(e) or a change in computing depreciation from the general depreciation system under section 168(a) to the alternative depreciation system of section 168(g). Further, a change to or from claiming the additional first year depreciation deduction provided by section 168(k) or 1400L(b) is a change in method of accounting under certain circumstances.

The regulations clarify that the useful life exception, which has been moved from § 1.446–1(e)(2)(ii)(*b*) to § 1.446–1T(e)(2)(ii)(*d*), applies only to property for which the depreciation is determined under section 167 (other than under section 168, section 1400I, section 1400L, or former section 168). However, a change to or from a useful life (or recovery period or amortization period) that is specifically assigned by the Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin is a change in method of accounting.

The regulations also provide that a change in salvage value to zero for a depreciable or amortizable asset for which the salvage value is expressly treated as zero by the Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin, is treated as a change in method of accounting. Any other change in salvage value is not treated as a change in method of accounting.

Further, the regulations provide that a change in the accounting for depreciable or amortizable assets from single asset accounting to multiple asset accounting (pooling), or vice versa, or from one type of multiple asset accounting (pooling) to a different type of multiple asset accounting (pooling) is a change in method of accounting. Also, for depreciable or amortizable assets that are mass assets accounted for in multiple asset accounts or pools, a change in the method of identifying which assets have been disposed is a change in method of accounting (for example, from specific identification to a first-in, first-out method).

Finally, the regulations provide that a change in the treatment of an asset from nondepreciable or nonamortizable (nondepreciable) to depreciable or amortizable (depreciable), or vice versa, is a change in method of accounting. For example, a change in the treatment of an asset that was used entirely in the taxpayer's trade or business and was never held for sale from being treated as inventory to being treated as depreciable property is a change in method of accounting.

Exceptions

The regulations provide that a change in computing depreciation allowances in the taxable year in which the use of property changes in the hands of the same taxpayer is not a change in method of accounting.

The regulations also provide that the making of a late depreciation election or the revocation of a timely valid depreciation election generally is not a change in method of accounting. This rule also applies to the making of a late election or the revocation of a timely valid election under section 13261(g)(2) or (3) of the Revenue Reconciliation Act of 1993 (107 Stat. 312, 540) (relating to amortizable section 197 intangibles). To make a late depreciation election or to revoke a timely valid depreciation election, a taxpayer must submit a request for a private letter ruling. Elections made under section 168(b)(2)(C), 168(b)(3)(D), or 168(g)(7) are irrevocable.

Finally, the regulations provide that any change in the placed-in-service date of a depreciable or amortizable asset is not treated as a change in method of accounting.

Item Being Changed

The regulations clarify that for purposes of changes in depreciation, the item being changed is the depreciation treatment of each individual depreciable or amortizable asset. However, the item is the depreciation treatment of each vintage account with respect to depreciable assets for which depreciation is determined under § 1.167(a)–11 (CLADR property).

Further, a change in computing depreciation under section 167 (other than a change under section 168, section 1400I, section 1400L, or former section 168) is permitted only with respect to all assets in a particular account (as defined in § 1.167(a)–7) or vintage account.

Special Rules

The regulations also provide rules for the following: (1) A change from a declining balance method under section 168(b)(1) or (2) to the straight line method; (2) changes in certain depreciation methods under section 167 (other than under section 168, section 1400I, section 1400L, or former section 168); and (3) section 481 adjustments.

With respect to a change from the 200-percent or 150-percent declining balance method under section 168(b)(1) or (2) to the straight line method, the regulations provide that this change may be made without the consent of the Commissioner in the first taxable year in which the depreciation allowance under the straight line method is greater than the depreciation allowance under the declining balance method.

With respect to changes in depreciation methods under section 167 (other than under section 168, section 1400I, section 1400L, or former section 168), the regulations provide cross-references to regulations under section 167 that allow certain depreciation method changes to be made without the consent of the Commissioner.

With respect to section 481 adjustments, the regulations also clarify that except as otherwise expressly provided by the Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin, a change from one permissible method of computing depreciation to another permissible method of computing depreciation for a depreciable or amortizable asset is implemented on either a cut-off method (as described in section 2.06 of Rev. Proc. 97–27 (1997–1 C.B. 680) and in section 2.06 of Rev. Proc. 2002–9 (2002–1 C.B. 327)) or a modified cut-off method (under which the adjusted depreciable basis of the asset as of the beginning of the year of change is recovered using the new permissible method of accounting). Because no items are duplicated or omitted from income when the cut-off method or the modified cut-off method is used to effect the change in method of accounting, no section 481 adjustment is required or permitted. However, a change from an impermissible method of computing depreciation to a permissible method of computing depreciation results in a negative or positive section 481 adjustment because the adjusted depreciable basis of the asset as of the beginning of the year of change is changed as a result of the change in computing depreciation. Similarly, a change in the treatment of an asset from nondepreciable to depreciable (or vice versa) or a change from expensing to depreciating an asset (or vice versa) will also result in a negative or positive section 481 adjustment.

Application of the Allowed or Allowable Rule to Changes in Method of Accounting

Section 1016(a)(2) provides that the basis of property is adjusted in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent of the amount allowed as deductions in computing taxable income and resulting in a reduction for any taxable year of the taxpayer's taxes, but not less than the amount allowable.

Concurrently with the issuance of these regulations, the IRS and Treasury Department will issue a revenue procedure that will allow a taxpayer to change the taxpayer's method of determining depreciation for a depreciable or amortizable asset after its disposition if the taxpayer did not take into account any depreciation allowance, or did take into account some depreciation but less than the depreciation allowable, for the asset in computing taxable income in the year of disposition or in prior taxable years. Because the taxpayer is permitted to claim the allowable depreciation not taken into account for this asset, the taxpayer's lifetime income is not permanently affected by the ''allowed or allowable'' rule under section 1016(a)(2). Accordingly, the regulations provide that section 1016(a)(2) does not permanently affect a taxpayer's lifetime income for purposes of determining whether a change in depreciation is a change in method of accounting under section 446(e) and the regulations under section 446(e).

The revenue procedure also will revise the depreciation changes included in Rev. Proc. 2002–9 (2002–1 C.B. 327), the automatic change in method of accounting revenue procedure, to conform with these regulations and will waive the application of Rev. Rul. 90–38 (1990–1 C.B. 57) for changes in depreciation made under Rev. Proc. 97–27 (1997–1 C.B. 680) or Rev. Proc. 2002–9.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Sara Logan, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.167(e)–1 is amended by:

■ 1. Revising paragraph (a).

■ 2. Adding new paragraph (e).

The addition and revision read as follows:

§ 1.167(e)–1 Change in method.

(a) *In general.* [Reserved]. For further guidance, see § 1.167(e)–1T(a).

* * * * *

(e) *Effective date.* [Reserved]. For further guidance, see the first two sentences of § 1.167(e)–1T(e).

■ **Par. 3.** Section 1.167(e)–1T is added to read as follows:

§ 1.167(e)–1T Change in method (temporary).

(a) *In general.* (1) Any change in the method of computing the depreciation allowances with respect to a particular account (other than a change in method

permitted or required by reason of the operation of former section 167(j)(2) and § 1.167(j)–3(c)) is a change in method of accounting, and such a change will be permitted only with the consent of the Commissioner, except that certain changes to the straight line method of depreciation will be permitted without consent as provided in former section 167(e)(1), (2), and (3). Except as provided in paragraphs (c) and (d) of this section, a change in method of computing depreciation will be permitted only with respect to all the assets contained in a particular account as defined in § 1.167(a)–7. Any change in the percentage of the current straight line rate under the declining balance method, for example, from 200 percent of the straight line rate to any other percent of the straight line rate, or any change in the interest factor used in connection with a compound interest or sinking fund method, will constitute a change in method of depreciation. Any request for a change in method of depreciation shall be made in accordance with section 446(e) and the regulations under section 446(e). For rules covering the use of depreciation methods by acquiring corporations in the case of certain corporate acquisitions, see section 381(c)(6) and the regulations under section 381(c)(6).

(2) Paragraphs (b), (c), and (d) of this section apply to property for which depreciation is determined under section 167 (other than under section 168, section 1400I, section 1400L, or under section 168 prior to its amendment by the Tax Reform Act of 1986 (100 Stat. 2121)) of the Internal Revenue Code.

(b) through (d) [Reserved]. For further guidance, see § 1.167(e)–1(b) through (d).

(e) *Effective date.* This section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see § 1.167(e)–1 in effect prior to December 30, 2003 (§ 1.167(e)–1 as contained in 26 CFR part 1 edition revised as of April 1, 2003). The applicability of this section expires on or before January 2, 2007.

■ **Par. 4.** Section 1.446–1 is amended by:

■ 1. Revising paragraphs (e)(2)(ii)(*a*), (e)(2)(ii)(*b*), and (e)(2)(iii).

■ 2. Adding new paragraphs (e)(2)(ii)(*d*) and (e)(4).

The additions and revisions read as follows:

§ 1.446–1 General rule for methods of accounting.

* * * * *

(e) * * *

(2) * * *

(ii) (*a*) [Reserved]. For further guidance, see § 1.446–1T(e)(2)(ii)(*a*).

(*b*) [Reserved]. For further guidance, see § 1.446–1T(e)(2)(ii)(*b*).

* * * * *

(*d*) *Changes involving depreciable or amortizable assets.* [Reserved]. For further guidance, see § 1.446–1T(e)(2)(ii)(*d*).

(iii) *Examples.* [Reserved]. For further guidance, see § 1.446–1T(e)(2)(iii).

* * * * *

(4) *Effective date.* [Reserved]. For further guidance, see § 1.446(e)–1T(e)(4)(i) and (ii).

■ **Par. 5.** Section 1.446–1T is added to read as follows:

§ 1.446–1T General rule for methods of accounting (temporary).

(a) through (e)(2)(i) [Reserved]. For further guidance, see § 1.446–1(a) through (e)(2)(i).

(e)(2)(ii)(*a*) A change in the method of accounting includes a change in the overall plan of accounting for gross income or deductions or a change in the treatment of any material item used in such overall plan. Although a method of accounting may exist under this definition without the necessity of a pattern of consistent treatment of an item, in most instances a method of accounting is not established for an item without such consistent treatment. A material item is any item that involves the proper time for the inclusion of the item in income or the taking of a deduction. Changes in method of accounting include a change from the cash receipts and disbursement method to an accrual method, or vice versa, a change involving the method or basis used in the valuation of inventories (see sections 471 and 472 and the regulations under sections 471 and 472), a change from the cash or accrual method to a long-term contract method, or vice versa (see § 1.460–4), certain changes in computing depreciation or amortization (see paragraph (e)(2)(ii)(*d*) of this section), a change involving the adoption, use or discontinuance of any other specialized method of computing taxable income, such as the crop method, and a change where the Internal Revenue Code and regulations under the Code specifically require that the consent of the Commissioner must be obtained before adopting such a change.

(*b*) A change in method of accounting does not include correction of mathematical or posting errors, or errors in the computation of tax liability (such as errors in computation of the foreign tax credit, net operating loss, percentage depletion, or investment credit). Also, a change in method of accounting does not include adjustment of any item of income or deduction that does not involve the proper time for the inclusion of the item of income or the taking of a deduction. For example, corrections of items that are deducted as interest or salary, but that are in fact payments of dividends, and of items that are deducted as business expenses, but which are in fact personal expenses, are not changes in method of accounting. In addition, a change in the method of accounting does not include an adjustment with respect to the addition to a reserve for bad debts. Although such adjustment may involve the question of the proper time for the taking of a deduction, such items are traditionally corrected by adjustment in the current and future years. For the treatment of the adjustment of the addition to a bad debt reserve (for example, for banks under section 585 of the Internal Revenue Code), *see* the regulations under section 166 of the Internal Revenue Code. A change in the method of accounting also does not include a change in treatment resulting from a change in underlying facts. For further guidance on changes involving depreciable or amortizable assets, see paragraph (e)(2)(ii)(*d*) of this section and § 1.1016–3T(h).

(*c*) [Reserved]. For further guidance, *see* § 1.446–1(e)(2)(ii)(*c*).

(*d*) *Changes involving depreciable or amortizable assets*—(*1*) *Scope.* This paragraph (e)(2)(ii)(*d*) applies to property subject to section 167, 168, 197, 1400I, 1400L(b), or 1400L(c), or to section 168 prior to its amendment by the Tax Reform Act of 1986 (100 Stat. 2121) (former section 168).

(*2*) *Changes in depreciation or amortization that are a change in method of accounting.* Except as provided in paragraph (e)(2)(ii)(*d*)(*3*) of this section, a change in the treatment of an asset from nondepreciable or nonamortizable to depreciable or amortizable, or vice versa, is a change in method of accounting. Additionally, a correction to require depreciation or amortization in lieu of a deduction for the cost of depreciable or amortizable assets that had been consistently treated as an expense in the year of purchase, or vice versa, is a change in method of accounting. Further, except as provided in paragraph (e)(2)(ii)(*d*)(*3*) of this section, the following changes in computing depreciation or amortization are a change in method of accounting:

(*i*) A change in the depreciation or amortization method, period of recovery, or convention of a depreciable or amortizable asset.

(*ii*) A change from not claiming to claiming the additional first year depreciation deduction provided by section 168(k) or 1400L(b) for, and the resulting change to the amount otherwise allowable as a depreciation deduction for the remaining adjusted depreciable basis (or similar basis) of, qualified property, 50-percent bonus depreciation property, or qualified New York Liberty Zone property, provided the taxpayer did not make the election out of the additional first year depreciation deduction (or did not make a deemed election out of the additional first year depreciation deduction; for further guidance, *see* Rev. Proc. 2002–33 (2002–1 C.B. 963), Rev. Proc. 2003–50 (2003–29 I.R.B. 119), and § 601.601(d)(2)(ii)(*b*) of this chapter) for the class of property in which the qualified property, the 50-percent bonus depreciation property, or the qualified New York Liberty Zone property is included.

(*iii*) A change from claiming the 30-percent additional first year depreciation deduction to claiming the 50-percent additional first year depreciation deduction for 50-percent bonus depreciation property (provided the property is not included in any class of property for which the taxpayer elected the 30-percent, instead of the 50-percent, additional first year depreciation deduction) or a change from claiming the 50-percent additional first year depreciation deduction to claiming the 30-percent additional first year depreciation deduction for qualified property (including property that is included in a class of property for which the taxpayer elected the 30-percent, instead of the 50-percent, additional first year depreciation deduction) or qualified New York Liberty Zone property, and the resulting change to the amount otherwise allowable as a depreciation deduction for the property's remaining adjusted depreciable basis (or similar basis). This paragraph (e)(2)(ii)(*d*)(*2*)(*iii*) does not apply if a taxpayer is making a late election or revoking a timely valid election under section 168(k) or 1400L(b) (see paragraph (e)(2)(ii)(*d*)(*3*)(*iii*) of this section).

(*iv*) A change from claiming to not claiming the additional first year depreciation deduction for an asset that is not qualified property, 50-percent bonus depreciation property, or qualified New York Liberty Zone property, and the resulting change to the amount otherwise allowable as a depreciation deduction for the property's depreciable basis.

(*v*) A change in salvage value to zero for a depreciable or amortizable asset for which the salvage value is expressly treated as zero by the Internal Revenue Code (for example, section 168(b)(4)), the regulations under the Code (for example, § 1.197–2(f)(1)(ii)), or other guidance published in the Internal Revenue Bulletin.

(*vi*) A change in the accounting for depreciable or amortizable assets from a single asset account to a multiple asset account (pooling), or vice versa, or from one type of multiple asset account (pooling) to a different type of multiple asset account (pooling).

(*vii*) For depreciable or amortizable assets that are mass assets accounted for in multiple asset accounts or pools, a change in the method of identifying which assets have been disposed. For purposes of this paragraph (e)(2)(ii)(*d*)(*2*)(*vii*), the term *mass assets* means a mass or group of individual items of depreciable or amortizable assets that are not necessarily homogeneous, each of which is minor in value relative to the total value of the mass or group, numerous in quantity, usually accounted for only on a total dollar or quantity basis, with respect to which separate identification is impracticable, and placed in service in the same taxable year.

(*viii*) Any other change in depreciation or amortization as the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(*3*) *Changes in depreciation or amortization that are not a change in method of accounting*—(*i*) *Useful life.* An adjustment in the useful life of a depreciable or amortizable asset for which depreciation is determined under section 167 (other than under section 168, section 1400I, section 1400L, or former section 168) is not a change in method of accounting. This adjustment in useful life is corrected by adjustments in the taxable year in which the conditions known to exist at the end of that taxable year changed thereby resulting in a redetermination of the useful life under § 1.167(a)–1(b) (or if the period of limitation for assessment under section 6501(a) has expired for that taxable year, in the first succeeding taxable year open under the period of limitation for assessment), and in subsequent taxable years. In other situations, the adjustment in useful life may be corrected by adjustments in the earliest taxable year open under the period of limitation for assessment under section 6501(a) or the earliest taxable year under examination by the Internal Revenue Service (IRS) but in no event earlier than the placed-in-service year of the asset, and in subsequent taxable years. However, if a taxpayer initiates the correction in useful life, in lieu of filing amended Federal tax returns (for example, because the conditions known to exist at the end of a prior taxable year changed thereby resulting in a redetermination of the useful life under § 1.167(a)–1(b)), the taxpayer may correct the adjustment in useful life by adjustments in the current and subsequent taxable years. This paragraph (e)(2)(ii)(*d*)(*3*)(*i*) does not apply if a taxpayer is changing to or from a useful life (or recovery period or amortization period) that is specifically assigned by the Internal Revenue Code (for example, section 167(f)(1), section 168(c), section 197), the regulations under the Code, or other guidance published in the Internal Revenue Bulletin and, therefore, such change is a change in method of accounting (unless paragraph (e)(2)(ii)(*d*)(*3*)(*v*) of this section applies).

(*ii*) *Change in use.* A change in computing depreciation or amortization allowances in the taxable year in which the use of an asset changes in the hands of the same taxpayer is not a change in method of accounting.

(*iii*) *Elections.* Generally, the making of a late depreciation or amortization election or the revocation of a timely valid depreciation or amortization election is not a change in method of accounting, except as otherwise expressly provided by the Internal Revenue Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin. This paragraph (e)(2)(ii)(*d*)(*3*)(*iii*) also applies to making a late election or revoking a timely valid election made under section 13261(g)(2) or (3) of the Revenue Reconciliation Act of 1993 (107 Stat. 312, 540) (relating to amortizable section 197 intangibles). A taxpayer may request consent to make a late election or revoke a timely valid election by submitting a request for a private letter ruling.

(*iv*) *Salvage value.* Except as provided under paragraph (e)(2)(ii)(*d*)(*2*)(*v*) of this section, a change in salvage value of a depreciable or amortizable asset is not treated as a change in method of accounting.

(*v*) *Placed-in-service date.* Any change in the placed-in-service date of a depreciable or amortizable asset is not treated as a change in method of accounting. The change in placed-in-service date may be corrected by adjustments in the earliest taxable year open under the period of limitation for assessment under section 6501(a) or the earliest taxable year under examination by the IRS but in no event earlier than the placed-in-service year of the asset,

and in subsequent taxable years. However, if a taxpayer initiates the change in placed-in-service date, in lieu of filing amended federal tax returns, the taxpayer may correct the placed-in-service date by adjustments in the current and subsequent taxable years.

(*vi*) Any other change in depreciation or amortization as the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter).

(*4*) *Item being changed.* For purposes of a change in depreciation or amortization to which this paragraph (e)(2)(ii)(*d*) applies, the item being changed generally is the depreciation treatment of each individual depreciable or amortizable asset. However, the item is the depreciation treatment of each vintage account with respect to a depreciable asset for which depreciation is determined under § 1.167(a)–11 (CLADR property). Further, a change in computing depreciation or amortization under section 167 (other than under section 168, section 1400I, section 1400L, or former section 168) is permitted only with respect to all assets in a particular account (as defined in § 1.167(a)–7) or vintage account.

(*5*) *Special rules.* For purposes of a change in depreciation or amortization to which this paragraph (e)(2)(ii)(*d*) applies—

(*i*) *Declining balance method to the straight line method for MACRS property.* For tangible, depreciable property subject to section 168 (MACRS property) that is depreciated using the 200-percent or 150-percent declining balance method of depreciation under section 168(b)(1) or (2), a taxpayer may change without the consent of the Commissioner from the declining balance method of depreciation to the straight line method of depreciation in the first taxable year in which the use of the straight line method with respect to the adjusted depreciable basis of the MACRS property as of the beginning of that year will yield a depreciation allowance that is greater than the depreciation allowance yielded by the use of the declining balance method. When the change is made, the adjusted depreciable basis of the MACRS property as of the beginning of the taxable year is recovered through annual depreciation allowances over the remaining recovery period (for further guidance, *see* section 6.06 of Rev. Proc. 87–57 (1987–2 C.B. 687) and § 601.601(d)(2)(ii)(*b*) of this chapter).

(*ii*) *Depreciation method changes for section 167 property.* For a depreciable or amortizable asset for which depreciation is determined under section 167 (other than under section 168, section 1400I, section 1400L, or former section 168), see § 1.167(e)–1T(b), (c), and (d) for the changes in depreciation method that are permitted to be made without the consent of the Commissioner. For CLADR property, see § 1.167(a)–11(c)(1)(iii) for the changes in depreciation method for CLADR property that are permitted to be made without the consent of the Commissioner. Further, *see* § 1.167(a)–11(b)(4)(iii)(c) for how to correct an incorrect classification or characterization of CLADR property.

(*iii*) *Section 481 adjustment.* Except as otherwise expressly provided by the Internal Revenue Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin, no section 481 adjustment is required or permitted for a change from one permissible method of computing depreciation or amortization to another permissible method of computing depreciation or amortization for an asset because this change is implemented by either a cut-off method (for further guidance, see section 2.06 of Rev. Proc. 97–27 (1997–1 C.B. 680), section 2.06 of Rev. Proc. 2002–9 (2002–1 C.B. 327), and § 601.601(d)(2)(ii)(*b*) of this chapter) or a modified cut-off method (under which the adjusted depreciable basis of the asset as of the beginning of the year of change is recovered using the new permissible method of accounting), as appropriate. However, a change from an impermissible method of computing depreciation or amortization to a permissible method of computing depreciation or amortization for an asset results in a section 481 adjustment. Similarly, a change in the treatment of an asset from nondepreciable or nonamortizable to depreciable or amortizable (or vice versa) or a change in the treatment of an asset from expensing to depreciating (or vice versa) results in a section 481 adjustment.

(iii) *Examples.* The rules of this paragraph (e) are illustrated by the following examples:

Example 1. Although the sale of merchandise is an income producing factor, and therefore inventories are required, a taxpayer in the retail jewelry business reports his income on the cash receipts and disbursements method of accounting. A change from the cash receipts and disbursements method of accounting to the accrual method of accounting is a change in the overall plan of accounting and thus is a change in method of accounting.

Example 2. A taxpayer in the wholesale dry goods business computes its income and expenses on the accrual method of accounting and files its Federal income tax returns on such basis except for real estate taxes which have been reported on the cash receipts and disbursements method of accounting. A change in the treatment of real estate taxes from the cash receipts and disbursements method to the accrual method is a change in method of accounting because such change is a change in the treatment of a material item within his overall accounting practice.

Example 3. A taxpayer in the wholesale dry goods business computes its income and expenses on the accrual method of accounting and files its Federal income tax returns on such basis. Vacation pay has been deducted in the year in which paid because the taxpayer did not have a completely vested vacation pay plan, and, therefore, the liability for payment did not accrue until that year. Subsequently, the taxpayer adopts a completely vested vacation pay plan that changes its year for accruing the deduction from the year in which payment is made to the year in which the liability to make the payment now arises. The change for the year of deduction of the vacation pay plan is not a change in method of accounting but results, instead, because the underlying facts (that is, the type of vacation pay plan) have changed.

Example 4. From 1968 through 1970, a taxpayer has fairly allocated indirect overhead costs to the value of inventories on a fixed percentage of direct costs. If the ratio of indirect overhead costs to direct costs increases in 1971, a change in the underlying facts has occurred. Accordingly, an increase in the percentage in 1971 to fairly reflect the increase in the relative level of indirect overhead costs is not a change in method of accounting but is a change in treatment resulting from a change in the underlying facts.

Example 5. A taxpayer values inventories at cost. A change in the basis for valuation of inventories from cost to the lower of cost or market is a change in an overall practice of valuing items in inventory. The change, therefore, is a change in method of accounting for inventories.

Example 6. A taxpayer in the manufacturing business has for many taxable years valued its inventories at cost. However, cost has been improperly computed since no overhead costs have been included in valuing the inventories at cost. The failure to allocate an appropriate portion of overhead to the value of inventories is contrary to the requirement of the Internal Revenue Code and the regulations under the Code. A change requiring appropriate allocation of overhead is a change in method of accounting because it involves a change in the treatment of a material item used in the overall practice of identifying or valuing items in inventory.

Example 7. A taxpayer has for many taxable years valued certain inventories by a method which provides for deducting 20 percent of the cost of the inventory items in determining the final inventory valuation. The 20 percent adjustment is taken as a ''reserve for price changes.'' Although this method is not a proper method of valuing inventories under the Internal Revenue Code or the regulations under the Code, it involves the treatment of a material item used in the overall practice of valuing inventory. A change in such practice or procedure is a change of method of accounting for inventories.

Example 8. A taxpayer has always used a base stock system of accounting for inventories. Under this system a constant price is applied to an assumed constant normal quantity of goods in stock. The base stock system is an overall plan of accounting for inventories which is not recognized as a proper method of accounting for inventories under the regulations. A change in this practice is, nevertheless, a change of method of accounting for inventories.

Example 9. In 2000, A1, a calendar year taxpayer engaged in the trade or business of manufacturing knitted goods, purchased and placed in service a building and its components at a total cost of $10,000,000 for use in its manufacturing operations. A1 classified the $10,000,000 as nonresidential real property under section 168(e). A1 did not make any elections under section 168 on its 2000 Federal tax return. As a result, on its 2000, 2001, and 2002 federal tax returns, A1 depreciated the $10,000,000 under the general depreciation system of section 168(a), using the straight line method of depreciation, a 39-year recovery period, and the mid-month convention. In 2003, A1 completes a cost segregation study on the building and its components and identifies items that cost a total of $1,500,000 as section 1245 property. As a result, the $1,500,000 should have been classified in 2000 as 5-year property under section 168(e) and depreciated on A1's 2000, 2001, and 2002 Federal tax returns under the general depreciation system, using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. Pursuant to paragraph (e)(2)(ii)(*d*)(*2*)(*i*) of this section, A1's change to this depreciation method, recovery period, and convention is a change in method of accounting. This method change results in a section 481 adjustment. The useful life exception under paragraph (e)(2)(ii)(*d*)(*3*)(*i*) of this section does not apply because the assets are depreciated under section 168.

Example 10. In 1996, B, a calendar year taxpayer, purchased and placed in service new equipment at a total cost of $1,000,000 for use in its plant located outside the United States. The equipment is 15-year property under section 168(e) with a class life of 20 years. The equipment is required to be depreciated under the alternative depreciation system of section 168(g). However, B incorrectly depreciated the equipment under the general depreciation system of section 168(a), using the 150-percent declining balance method, a 15-year recovery period, and the half-year convention. In 2003, the IRS examines B's 2000 Federal income tax return and changes the depreciation of the equipment to the alternative depreciation system, using the straight line method of depreciation, a 20-year recovery period, and the half-year convention. Pursuant to paragraph (e)(2)(ii)(*d*)(*2*)(*i*) of this section, this change in depreciation method and recovery period made by the IRS is a change in method of accounting. This method change results in a section 481 adjustment. The useful life exception under paragraph (e)(2)(ii)(*d*)(*3*)(*i*) of this section does not apply because the assets are depreciated under section 168.

Example 11. In May 2001, C, a calendar year taxpayer, purchased and placed in service equipment for use in its trade or business. C never held this equipment for sale. However, C incorrectly treated the equipment as inventory on its 2001 and 2002 Federal tax returns. In 2003, C realizes that the equipment should have been treated as a depreciable asset. Pursuant to paragraph (e)(2)(ii)(*d*)(*2*) of this section, C's change in the treatment of the equipment from inventory to a depreciable asset is a change in method of accounting. This method change results in a section 481 adjustment.

Example 12. Since 2001, D, a calendar year taxpayer, has used the distribution fee period method to amortize distributor commissions and, under that method, established pools to account for the distributor commissions (for further guidance, see Rev. Proc. 2000–38 (2000–2 C.B. 310) and § 601.601(d)(2)(ii)(*b*) of this chapter). A change in the accounting of distributor commissions under the distribution fee period method from pooling to single asset accounting is a change in method of accounting pursuant to paragraph (e)(2)(ii)(*d*)(*2*)(*vi*) of this section. This method change results in no section 481 adjustment because the change is from one permissible method to another permissible method.

Example 13. Since 2000, E, a calendar year taxpayer, has accounted for items of MACRS property that are mass assets in pools. Each pool includes only the mass assets that are placed in service by E in the same taxable year. E is able to identify the cost basis of each asset in each pool. None of the pools are general asset accounts under section 168(i)(4) and the regulations under section 168(i)(4). E identified any dispositions of these mass assets by specific identification. Because of changes in E's recordkeeping in 2003, it is impracticable for E to continue to identify disposed mass assets using specific identification. As a result, E wants to change to a first-in, first-out method under which the mass assets disposed of in a taxable year are deemed to be from the pool with the earliest placed-in-service year in existence as of the beginning of the taxable year of each disposition. Pursuant to paragraph (e)(2)(ii)(*d*)(*2*)(*vii*) of this section, this change is a change in method of accounting. This method change results in no section 481 adjustment because the change is from one permissible method to another permissible method.

Example 14. In August 2001, F, a calendar taxpayer, purchased and placed in service a copier for use in its trade or business. F incorrectly classified the copier as 7-year property under section 168(e). F made no elections under section 168 on its 2001 Federal tax return. As a result, on its 2001 and 2002 Federal tax returns, F depreciated the copier under the general depreciation system of section 168(a), using the 200-percent declining balance method of depreciation, a 7-year recovery period, and the half-year convention. In 2003, F realizes that the copier is 5-year property and should have been depreciated on its 2001 and 2002 Federal tax returns under the general depreciation system using a 5-year recovery period rather than a 7-year recovery period. Pursuant to paragraph (e)(2)(ii)(*d*)(*2*)(*i*) of this section, F's change in recovery period from 7 to 5 years is a change in method of accounting. This method change results in a section 481 adjustment. The useful life exception under paragraph (e)(2)(ii)(*d*)(*3*)(*i*) of this section does not apply because the copier is depreciated under section 168.

Example 15. In 1998, G, a calendar year taxpayer, purchased and placed in service an intangible asset that is not an amortizable section 197 intangible and that is not described in section 167(f). G amortized the cost of the intangible asset under section 167(a) using the straight line method of depreciation and a useful life of 13 years. In 2003, because of changing conditions, G changes the remaining useful life of the intangible asset to 2 years. Pursuant to paragraph (e)(2)(ii)(*d*)(*3*)(*i*) of this section, G's change in useful life is not a change in method of accounting because the intangible asset is depreciated under section 167 and G is not changing to or from a useful life that is specifically assigned by the Internal Revenue Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin.

Example 16. In July 2001, H, a calendar year taxpayer, purchased and placed in service ''off-the-shelf'' computer software and a new computer. The cost of the new computer and computer software are separately stated. H incorrectly included the cost of this software as part of the cost of the computer, which is 5-year property under section 168(e). On its 2001 Federal tax return, H elected to depreciate its 5-year property placed in service in 2001 under the alternative depreciation system of section 168(g). The class life for a computer is 5 years. As a result, because H included the cost of the computer software as part of the cost of the computer hardware, H depreciated the cost of the software under the alternative depreciation system, using the straight line method of depreciation, a 5-year recovery period, and the half-year convention. In 2003, H realizes that the cost of the software should have been amortized under section 167(f)(1), using the straight line method of depreciation, a 36-month useful life, and a monthly convention. H's change from 5-years to 36-months is a change in method of accounting because H is changing to a useful life that is specifically assigned by section 167(f)(1). The change in convention from the half-year to the monthly convention also is a change in method of accounting. Both changes result in a section 481 adjustment.

Example 17. On September 15, 2001, I2, a calendar year taxpayer, purchased and placed in service new equipment at a total cost of $500,000 for use in its business. The equipment is 5-year property under section 168(e) with a class life of 9 years and is qualified property under section 168(k). I2 did not place in service any other depreciable property in 2001. Section 168(g)(1)(A) through (D) do not apply to the equipment. I2 intended to elect the alternative depreciation system under section 168(g) for 5-year property placed in service in 2001. However, I2 did not make the election. Instead, I2 deducted on its 2001 Federal tax return the 30-percent additional first year depreciation attributable to the equipment

and, on its 2001 and 2002 Federal tax returns, depreciated the remaining adjusted depreciable basis of the equipment under the general depreciation system under 168(a), using the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. In 2003, I2 realizes its failure to make the alternative depreciation system election in 2001 and files a Form 3115 to change its method of depreciating the remaining adjusted depreciable basis of the 2001 equipment to the alternative depreciation system. Because this equipment is not required to be depreciated under the alternative depreciation system, I2 is attempting to make an election under section 168(g)(7). However, this election must be made in the taxable year in which the equipment is placed in service (2001) and, consequently, I2 is attempting to make a late election under section 168(g)(7). Accordingly, I2's change to the alternative depreciation system is not a change in accounting method pursuant to paragraph (e)(2)(ii)(*d*)(*3*)(*iii*) of this section. Instead, I2 must submit a request for a private letter ruling under § 301.9100–3 of this chapter, requesting an extension of time to make the alternative depreciation system election on its 2001 Federal tax return.

(3) [Reserved]. For further guidance, see § 1.446–1(e)(3).

(4) *Effective date*—(i) *In general.* Except as provided in paragraphs (e)(3)(iii) and (e)(4)(ii) of this section, paragraph (e) of this section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, *see* § 1.446–1(e) in effect prior to December 30, 2003 (§ 1.446–1(e) as contained in 26 CFR part 1 edition revised as of April 1, 2003).

(ii) *Changes involving depreciable or amortizable assets.* With respect to paragraph (e)(2)(ii)(*d*) of this section, paragraph (e)(2)(iii) *Examples 9* through *17* of this section, the addition of the language ''certain changes in computing depreciation or amortization (see paragraph (e)(2)(ii)(*d*) of this section)'' to the last sentence of paragraph (e)(2)(ii)(*a*) of this section, and the removal of all language regarding useful life and the sentence ''On the other hand, a correction to require depreciation in lieu of a deduction for the cost of a class of depreciable assets which had been consistently treated as an expense in the year of purchase involves the question of the proper timing of an item, and is to be treated as a change in method of accounting'' from paragraph (e)(2)(ii)(*b*) of this section—

(A) For any change in depreciation or amortization that is a change in method of accounting, this section applies to such a change in method of accounting made for taxable years ending on or after December 30, 2003; and

(B) For any change in depreciation or amortization that is not a change in method of accounting, this section applies to such a change made for taxable years ending on or after December 30, 2003.

(iii) The applicability of paragraph (e) of this section expires on or before January 2, 2007.

■ **Par. 6.** Section 1.1016–3 is amended by:

■ 1. Redesignating paragraph (h) as paragraph (i).

■ 2. Adding new paragraphs (h) and (j).

The additions read as follows:

§ 1.1016–3 Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 28, 1913.

* * * * *

(h) *Application to a change in method of accounting.* [Reserved]. For further guidance, see § 1.1016–3T(h).

* * * * *

(j) *Effective date.* [Reserved]. For further guidance, see § 1.1016–3T(j)(1) and (2).

■ **Par. 7.** Section 1.1016–3T is added to read as follows:

§ 1.1016–3T Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 28, 1913 (temporary).

(a) through (g) [Reserved]. For further guidance, *see* § 1.1016–3(a) through (g).

(h) *Application to a change in method of accounting.* For purposes of determining whether a change in depreciation or amortization for property subject to section 167, 168, 197, 1400I, 1400L(b), or 1400L(c), or to section 168 prior to its amendment by the Tax Reform Act of 1986 (100 Stat. 2121) (former section 168) is a change in method of accounting under section 446(e) and the regulations under section 446(e), section 1016(a)(2) does not permanently affect a taxpayer's lifetime income.

(i) [Reserved]. For further guidance, see § 1.1016–3(i).

(j) *Effective date*—(1) *In general.* Except as provided in paragraph (j)(2) of this section, this section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see § 1.1016–3 in effect prior to December 30, 2003 (§ 1.1016–3 as contained in 26 CFR part 1 edition revised as of April 1, 2003).

(2) *Depreciation or amortization changes.* Paragraph (h) of this section applies to a change in depreciation or amortization for property subject to section 167, 168, 197, 1400I, 1400L(b), or 1400L(c), or former section 168 for taxable years ending on or after December 30, 2003.

(3) The applicability of this section expires on or before January 2, 2007.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, and 26

[TD 9102]

RIN 1545–AX96

Definition of Income for Trust Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations revising the definition of income under section 643(b) of the Internal Revenue Code. The regulations are necessary to reflect changes in the definition of trust accounting income under state laws. The final regulations also clarify the situations in which capital gains are included in distributable net income under section 643(a)(3). Conforming amendments are made to regulations affecting ordinary trusts, pooled income funds, charitable remainder trusts, trusts that qualify for the gift and estate tax marital deduction, and trusts that are exempt from generation-skipping transfer taxes. The regulations affect the grantors, beneficiaries, and fiduciaries of trusts.

DATES: *Effective Date:* These regulations are effective January 2, 2004.

Applicability date: Generally, the final regulations are applicable to trusts and estates for taxable years ending after January 2, 2004. *See* revised §§ 1.642(c)–2, 1.642(c)–5, and 1.664–3 for special dates of applicability affecting those sections.

FOR FURTHER INFORMATION CONTACT: Bradford R. Poston at (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 15, 2001, proposed regulations (REG–106513–00) were published in the **Federal Register** [66 FR 10396] containing proposed amendments to the Income Tax

Regulations [26 CFR part 1], the Estate Tax Regulations [26 CFR part 20], the Gift Tax Regulations [26 CFR part 25], and the Generation-Skipping Transfer Tax Regulations [26 CFR part 26] relating to the definition of income for trust purposes. A public hearing was held on the proposed regulations on June 8, 2001. Written comments were received on the proposed regulations. The proposed regulations, with certain changes in response to the comments, are adopted as final regulations.

Summary of Comments and Explanation of Revisions

Definition of Income

The proposed regulations provide that, for purposes of determining what constitutes trust accounting income under section 643(b), trust provisions that depart fundamentally from the traditional concepts of income and principal generally will continue to be disregarded as they have been under the existing regulations. One commentator suggested that, instead of using traditional concepts of income and principal, the benchmark should be whether there is a departure from the duty to administer the trust or estate impartially based upon what is fair and reasonable to all the parties. One commentator suggested eliminating the distinction between trust accounting income and principal. Another suggested that the regulations clarify the consequences of a fundamental departure from traditional concepts of income and principal.

Income under section 643(b) is the amount of income determined under the terms of the governing instrument and applicable local law. This concept of income is used as the measure of the amount that must be distributed from a trust in order for the trust to qualify for certain treatment under various provisions of the Internal Revenue Code. Trusts classified as simple trusts, pooled income funds, net income charitable remainder unitrusts, and qualified subchapter S trusts (QSSTs) are required to make distributions measured at least in part by the amount of trust accounting income. A similar concept applies to trusts that qualify for the gift and estate tax marital deductions. Because section 643(b) requires a determination of trust accounting income, it is not possible to ignore any distinctions between trust accounting income and principal as suggested by a commentator.

A trust instrument may provide for any amount to be distributed to beneficiaries currently. Trust provisions that measure the amount of the distribution by reference to income but define income differently from the state statutory definition of income generally will be recognized for state law purposes. However, Internal Revenue Code provisions that require the current distribution of income to qualify the trust for certain federal tax treatment are based on the assumption that the income beneficiary will receive what is traditionally considered to be income. In some situations, such as with QSSTs and marital deduction trusts for spouses who are U.S. citizens, the income beneficiary is permitted to also receive principal distributions as long as all the income is currently distributed. In other situations, as with pooled income funds and net income charitable remainder unitrusts, only the income may be distributed. In all these situations, the determination of income is critical. Thus, the definition of income under the terms of the governing instrument and applicable local law must not depart fundamentally from traditional concepts of income and principal, if the desired federal tax treatment is to be secured.

The IRS and the Treasury Department recognize that state statutes are in the process of changing traditional concepts of income and principal in response to investment strategies that seek total positive return on trust assets. These statutes are designed to ensure that, when a trust invests in assets that may generate little traditional income (including dividends, interest, and rents), the income and remainder beneficiaries are allocated reasonable amounts of the total return of the trust (including both traditional income and capital appreciation of trust assets) so that both classes of beneficiaries are treated impartially. Some statutes permit the trustee to pay to the person entitled to the income a unitrust amount based on a fixed percentage of the fair market value of the trust assets. Other statutes permit the trustee the discretion to make adjustments between income and principal to treat the beneficiaries impartially. Under the proposed regulations, a trust's definition of income in conformance with applicable state statutes will be respected for federal tax purposes when the state statutes provide for a reasonable apportionment of the total return of the trust.

Some commentators suggested that, even in those states that have not enacted legislation specifically authorizing powers to adjust or a unitrust definition of income, trust instruments containing such provisions should be respected as defining income for purposes of section 643(b). Under a unitrust or power to adjust, items traditionally allocable to principal (such as gains from the sale or exchange of trust assets) may, under certain circumstances, be allocated to income, and items traditionally allocable to income (such as dividends, interest, and rents) may, under certain circumstances, be allocated to principal. The proposed regulations already recognize that gains from the sale or exchange of trust assets may, under certain circumstances, be allocated to income under the terms of the governing instrument. However, § 1.643(b)–1 has always provided that the allocation to principal, under the terms of the governing instrument, of items that traditionally would be allocable to income will not be respected for purposes of section 643(b), and this position is maintained in the final regulations. Accordingly, the IRS and the Treasury Department believe that an allocation to principal of traditional income items should be respected for Federal tax purposes only if applicable state law has specifically authorized such an allocation in certain limited circumstances, such as when necessary to ensure impartiality regarding a trust investing for total return. Under the regulations, a state statute specifically authorizing certain unitrust payments in satisfaction of an income interest or certain powers to adjust would satisfy that requirement. Further, the IRS and the Treasury Department acknowledge that other actions may constitute applicable state law, such as a decision by the highest court of the state announcing a general principle or rule of law that would apply to all trusts administered under the laws of that state. However, a court order applicable only to the trust before the court would not constitute applicable state law for this purpose.

Two commentators suggested that the permissible range of unitrust percentages should include any percentage permitted by state statutes. The IRS and the Treasury Department believe that when establishing a unitrust percentage that attempts to yield the equivalent of income over a long period of time that may encompass wide variations in economic conditions, a range of 3% to 5% will be considered a reasonable apportionment of a trust's total return. In response to one comment, the range of unitrust percentages has been adjusted in the final regulations to include, rather than exclude, unitrust percentages of 3% and 5%. Also in response to comments, the final regulations state that the periodic redetermination of the fair market value of the trust assets may be done as of a

particular date each year or as an average determined on a multiple year basis.

The proposed regulations state that traditionally ordinary income is allocated to income and capital gains are allocated to principal. One commentator pointed out that ordinary income and capital gains are tax concepts and not concepts that have any meaning for purposes of trust accounting income. The final regulations have been revised to state that traditionally items such as dividends, interest, and rents are allocated to income and the proceeds from the sale or exchange of trust assets are allocated to principal.

The proposed regulations refer to a power to make equitable adjustments between income and principal and describe the circumstances under which these adjustments currently are permitted under state law and will be respected for Federal tax purposes. Specifically, state statutes permit adjustments when trust assets are invested under the state's prudent investor standard, the trust instrument refers to income in describing the amount that may or must be paid to a beneficiary, and the trustee, after applying the state statutory rules regarding the allocation of receipts and disbursements between income and principal, is unable to administer the trust impartially. One commentator requested clarification of the requirements a trustee must satisfy to make an adjustment that will be respected for Federal tax purposes. Those requirements are a matter of local law and may differ from state to state; the trustee must meet whatever requirements are imposed by applicable local law on the exercise of this power. One commentator pointed out that state statutes do not include the term equitable in referring to this power and suggested deleting that term. One commentator suggested adding ''generally'' to the statement concerning the circumstances in which these adjustments are permitted because some states may permit these adjustments without enacting a prudent investor standard. These two suggestions are adopted in the final regulations.

One commentator suggested clarifying that the definition of income in the regulations also applies to spray and sprinkle trusts. The final regulations provide that allocations apportioning the total return of the trust pursuant to the state statute will be respected regardless of whether the trust has one or more income beneficiaries and irrespective of whether income must or may be paid out each year. The commentator also suggested that allocations pursuant to one apportionment method should be respected even if a different apportionment method was used in prior years. The final regulations provide that, as long as the trust complies with the requirements of state statutes for switching between methods authorized by the statute, then, when the trust switches between permitted methods: (i) The method used in any year will be respected for Federal tax purposes; (ii) the switch will not constitute a recognition event under section 1001; and (iii) neither the grantor nor any beneficiary will have any gift tax consequences. This provision does not apply to switches between methods not specifically authorized by state statute.

It has been questioned whether the changes to § 1.643(b)–1 affect the amount of income required to be distributed by QSSTs. Section 1.1361–1(j) provides that QSSTs are required to distribute income as defined in § 1.643(b)–1. Therefore, no amendment to the QSST regulations is necessary for the new provisions of § 1.643(b)–1 to be applicable to QSSTs.

The proposed regulations provide that an allocation of capital gains to income will be respected if made either (i) pursuant to the terms of the governing instrument and applicable local law, or (ii) pursuant to a reasonable and consistent exercise of a discretionary power granted to the fiduciary by local law, or by the governing instrument if not inconsistent with local law. One commentator suggested that in the phrase ''pursuant to the terms of the governing instrument and applicable local law,'' the term ''and'' be replaced with ''or.'' The phrase with the term ''and'' is consistent with the statutory language of section 643(b), and, therefore, no change has been made.

One commentator suggested that a discretionary power to allocate capital gains to income should not have to be exercised consistently. The exercise of the power generally affects the actual amount that may or must be distributed to the income beneficiaries and affects whether the trust or the beneficiary will be taxed on the capital gains. Thus, the IRS and the Treasury Department agree that the power does not have to be exercised consistently, as long as it is exercised reasonably and impartially. However, if the amount of income is determined by a unitrust amount, the exercise of this discretionary power has no effect on the amount of the distribution, but does affect whether the beneficiary or the trust is taxed on the capital gains. Under these circumstances, a discretionary power must be exercised consistently. One commentator suggested changing the phrase ''if not inconsistent with local law'' because powers to allocate capital gains to income will almost always be inconsistent with the default provisions of state law. Accordingly, the phrase has been changed to ''if not prohibited by local law.''

Pooled Income Funds

Several commentators were concerned about the provision in the proposed regulations that long-term capital gain does not qualify for the income tax charitable deduction available to pooled income funds (PIFs), if the amount of income payable to the noncharitable beneficiaries may be either a unitrust amount or an amount that could include unrealized appreciation in the value of trust assets pursuant to the exercise of a trustee's power to adjust. One commentator suggested that, if income is defined as a unitrust amount or is subject to the trustee's power of adjustment, the provision in the proposed regulation invalidly limits the amount that can be paid to the noncharitable beneficiaries of the PIF.

This regulatory provision places no prohibition on paying to the noncharitable beneficiaries an amount of income determined under the governing instrument and applicable local law, even if that income is a unitrust amount or is determined pursuant to a power of adjustment that takes into account unrealized appreciation. Rather, this regulatory provision addresses whether long-term capital gains recognized during a year but not distributed during that year are permanently set aside for a charitable purpose as required by section 642(c)(3) to allow the PIF to claim a charitable deduction for these amounts. If income is defined as a unitrust amount, a future payment of income to the noncharitable beneficiaries may be attributable to long-term capital gains realized, but not distributed, in the current year. If income is determined pursuant to a power of adjustment that takes into account unrealized appreciation, a portion of the capital gain recognized during a year may be attributable to appreciation that was the basis for a distribution to the noncharitable beneficiaries in a prior year. In both situations, the long-term capital gains are not permanently set aside for charitable purposes and therefore do not qualify for the charitable deduction in computing the PIF's income tax liability.

Some commentators were concerned that PIFs need to be able to distribute more than the traditional amounts of income to remain useful vehicles for charitable giving. They suggest that PIFs should be able to define trust accounting income as traditional income plus any realized capital gains for the year but the total amount defined as income cannot exceed a specified percentage. Thus, the annual payout would be the lesser of a unitrust amount or trust accounting income defined to include gains from the appreciation of assets sold by the trust during the year.

Distinct statutory provisions govern PIFs and charitable remainder unitrusts (CRUTs). The provisions applicable to each type of trust are specifically designed to achieve statutory objectives based on the nature of the charitable and noncharitable interests in each type of trust. The commentators' suggestion is, in effect, to permit PIFs to operate in the same manner as a net income CRUT, but without applying any of the other CRUT requirements to these funds. There is no authority for incorporating certain provisions applicable to CRUTs into the provisions applicable to PIFs.

Nevertheless, the power to adjust authorized by many state statutes currently applies to PIFs administered in those states. If permitted under the terms of the governing instrument and state statutes, a trustee may use the power to make adjustments by allocating to income a portion of the sales proceeds from trust assets in order to treat the income and remainder beneficiaries impartially. The proper exercise of a power to adjust may provide the income beneficiaries with amounts in excess of the amount of traditional income. The final regulations provide that, for a PIF, the amount of proceeds from the sale of assets that may be allocated to income pursuant to a power to adjust is limited to the amount by which those proceeds exceed the fair market value of those assets as of the date those assets were contributed to or purchased by the PIF. This provision ensures that amounts attributable to the fair market value of assets on the date contributed to the PIF cannot be reallocated to income under a power to adjust. In addition, long-term capital gains from the sale or exchange of trust assets do not qualify for the charitable deduction under section 642(c)(3) to the extent that any sales proceeds are distributed to the income beneficiaries.

One commentator suggested that the ''or'' in the phrase ''under the terms of the governing instrument or applicable local law'' should be changed to ''and'' to be consistent with the statutory definition of income under section 643(b). This change has been made.

Charitable Remainder Trusts

Several commentators were concerned about the requirement in the proposed regulations that net income CRUTs under sections 664(d)(2) and 664(d)(3) contain their own definition of income if applicable state law provides that income is a unitrust amount. The purpose of this proposed requirement was to avert potential problems with qualification of a net income CRUT in a state that defines income as a unitrust amount. Some commentators pointed out that state statutes provide alternative definitions of income and all that should be necessary is that the trust use a definition of income, whether contained in the terms of the governing instrument or applicable local law, that is not a unitrust amount. Therefore, the requirement that the trust contain its own definition of income has been eliminated from the final regulations.

Several commentators were concerned about the provision in the proposed regulations that the allocation of post-contribution capital gain to income, if permitted under the terms of the governing instrument and applicable local law, may not be discretionary with the trustee. Some suggested eliminating the prohibition on discretionary powers held by the trustee. Some suggested that a discretionary power should be permitted if held by an independent trustee. Some requested clarification that this prohibition does not apply to a trustee's power to allocate receipts to income or principal pursuant to state law.

The provision in the proposed regulations has no effect on the determination of trust accounting income under applicable state law that grants the trustee a power to reasonably apportion the total return of the trust. The provision is directed at discretion given the trustee under the terms of the governing instrument to allocate capital gains to income in some years and not others. Allowing the trustee this type of discretion is inconsistent with the requirements for net income CRUTs as explained in the legislative history. The settlor has the option of providing in the trust that the trustee is to distribute the lesser of the stated percentage payout or trust income. However, this option must be adopted in the trust instrument and not left to the discretion of the trustee. See H.R. Conf. Rep. No. 91–782, at 296 (1969), reprinted in 1969–3 C.B. 644, 655. A power to allocate capital gains to income in some years and not others in the trustee's sole discretion is similar to having the discretionary ability to pay out either the trust income or the stated percentage payout each year, regardless of their relative values. Thus, the final regulations continue to provide that, for CRUTs, post-contribution capital gains may be included in the definition of income under the terms of the governing instrument or applicable local law, but not pursuant to a trustee's discretionary power granted by the trust instrument, rather than by state statute, to allocate capital gains to income.

Capital Gains and Distributable Net Income

Section 643(a)(3) provides that gains from the sale or exchange of capital assets generally are excluded from distributable net income (DNI) to the extent that these gains are allocated to corpus. However, capital gains allocated to corpus are included in DNI if they are either paid, credited, or required to be distributed, to a beneficiary during the year, or paid, permanently set aside, or to be used for a charitable purpose. In certain situations it is easily ascertained whether capital gains are paid to a beneficiary. For example, if the trust instrument provides that the proceeds from the sale of a certain asset are to be paid to a beneficiary upon sale, then any capital gain recognized upon the sale of that asset is paid to the beneficiary and is includible in DNI. However, the circumstances in which recognized capital gain determines the amount to be distributed to a beneficiary during the year are relatively rare.

More frequently, the trustee is authorized by the trust instrument to make discretionary distributions of principal or, by the recently-enacted state statutes, to pay the income beneficiary a unitrust amount. In these circumstances, the amount of realized capital gain during the year does not affect the amount distributed to a beneficiary, and because money is fungible, it is difficult to ascertain whether capital gains are actually paid to the beneficiary. With respect to these situations, the proposed regulations attempt to clarify the circumstances in which capital gains are treated as distributed to a beneficiary and therefore are includable in DNI. The proposed regulations provide that capital gains will be treated as part of a distribution to a beneficiary, if the trustee allocates capital gains to the distribution pursuant to a discretionary power granted by local law or by the governing instrument (if not inconsistent with local law) to treat capital gains in this manner, provided the allocation power is exercised in a reasonable and consistent manner, and

is evidenced on the trust's books, records, and tax returns.

Commentators requested guidance on several issues concerning the treatment of capital gains as part of a distribution to a beneficiary. These issues include clarification that one trustee may exercise the discretion differently for different trusts and that the treatment of capital gains from the sale of different types of assets may be different. Examples have been added to the final regulations to address these situations. In addition, some commentators were concerned about how a trustee may show consistency in the first year, whether the treatment in future years may be changed based on something other than a change in the definition of income, and whether existing trusts may establish a different treatment based on the rules in the final regulations.

In some respects, the proposed regulations merely clarify how a trustee may demonstrate that capital gain has been paid to a beneficiary and therefore is includible in DNI under section 643(a)(3). This determination is relevant when distributions are made to beneficiaries that exceed the amount of DNI determined without regard to the capital gains. In the past this situation arose when mandatory or discretionary payments of principal were made. Because of the changes to the definition of income under state statutes, the number and variety of situations in which this determination is relevant are increasing. In implementing a different method for determining income under a state statute, the trustee may establish a pattern for including or not including capital gains in DNI to the extent that the amount of income so determined is greater than the amount of DNI determined without regard to the capital gains. This choice may be made irrespective of the trustee's practice under a prior legal definition of income regarding the treatment of capital gains as part of DNI when discretionary or mandatory distributions of principal were made from the trust.

Two commentators requested examples of the inclusion of capital gains in DNI when the trustee exercises a power to adjust between income and principal under applicable local law. The circumstances in which a power to adjust is exercisable may vary among states and may be determined by the powers of the trustee to make distributions of income and principal under the terms of the governing instrument. For example, if a trust instrument does not permit the trustee to distribute any corpus and the power to adjust under local law may be exercised only with respect to receipts from the sale of trust assets, the amount allocated to income under the power to adjust may have to be from the realized appreciation in the value of the assets that were sold. On the other hand, if the trust instrument permits discretionary distributions of principal and the power to adjust under local law may be exercised only with respect to appreciation in the value of trust assets, the power to adjust may be similar to a unitrust amount that is payable irrespective of whether appreciated assets are sold during the year. Because of the potential variations in the circumstances and ramifications of exercising a power to adjust under applicable state statutes, additional examples would be unlikely to provide meaningful or complete guidance; thus, the final regulations contain no additional examples concerning inclusion of capital gains in DNI when the trustee exercises a power to adjust.

It has been pointed out that *Examples 6* through *8* in § 1.643(a)–3(e) of the proposed regulations, which are essentially identical to examples in the existing regulations, may no longer be consistent with the rules in the proposed regulations. In the final regulations, the corresponding examples, now *Examples 7* through *10*, have been updated to take into account the new rules. One commentator requested examples of the effect on DNI of capital gains from a passthrough entity and income from a passthrough entity that is more or less than the trust accounting income from that entity. These issues are beyond the scope of this project.

Trusts Qualifying for Gift and Estate Tax Marital Deductions

The proposed regulations provide that a spouse will be treated as entitled to receive all net income from a trust, as required for the trust to qualify for the gift and estate tax marital deductions under § 20.2056(b)–5(a)(1) of the Estate Tax Regulations and § 25.2523(e)–1(f)(1) of the Gift Tax Regulations, if the trust is administered under applicable state law that provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and that meets the requirements of § 1.643(b)–1. Thus, a spouse who, as the income beneficiary, is entitled in accordance with the state statute and the governing instrument to a unitrust amount of no less than 3% and no more than 5% would be entitled to all the income from the trust for purposes of qualifying the trust for the marital deduction.

Several commentators suggested that a trust that provides for a unitrust payment to the spouse should satisfy the income standard even in states that have not enacted legislation defining income as a unitrust amount or providing that a right to income may be satisfied by such a payment. The income distribution requirement that must be satisfied for a trust to qualify for the gift and estate tax marital deductions ensures that the spouse receives what is traditionally considered to be income from the assets held in trust. As previously discussed, the IRS and the Treasury Department believe that only if applicable state law has authorized a departure from traditional concepts of income and principal should such a departure be respected for Federal tax purposes. A state statute specifically authorizing certain unitrust amounts in satisfaction of an income interest or certain powers to adjust in conformance with the provisions of § 1.643(b)–1 would meet this standard. However, in the absence of a state statute, or, for example, a decision of the highest court of the state applicable to all trusts administered under that state's law, the applicable state law requirement will not be satisfied.

It has also been suggested that, in some circumstances, the proposed regulations would allow the spouse to receive less than all the traditional trust income, and therefore would conflict with the section 2056 statutory requirement that the spouse receive all trust income. For example, a spouse who, in accordance with the state statute, receives a 4% unitrust amount would receive less than all the traditional income generated by the trust, if the trust's total dividends, interest, rents, etc. for the year exceed 4%. However, that spouse would receive more than the amount of traditional income earned by the trust in any year that the trust's total dividends, interest, rents, etc. do not exceed 4%. The regulations are intended to strike a reasonable balance between the marital deduction statutory requirements and the many state statutes intended to facilitate the investment of trust assets while ensuring equitable treatment for the income and remainder beneficiaries. Indeed, Congress contemplated that, in appropriate circumstances, an annuity could be treated as satisfying the statutory income distribution requirement. The flush language following section 2056(b)(7)(B)(ii) specifically authorizes regulations that treat an annuity ''in a manner similar to an income interest in property.'' The IRS and Treasury Department believe that these regulations implement this statutory authorization in a reasonable

manner by recognizing allocations under state statutes that provide for a reasonable apportionment of the total return of the trust.

Trusts Exempt From Generation-Skipping Transfer Tax

The proposed regulations expand the rules concerning changes that may be made to trusts that are exempt from the generation-skipping transfer tax because they were irrevocable on September 25, 1985, without causing the loss of the trusts' exempt status. If such an exempt trust is administered in conformance with applicable state law that permits a unitrust amount to be paid to the income beneficiary or permits adjustments between income and principal to ensure impartiality, and that meets the requirements of § 1.643(b)–1, its exempt status will not be affected.

One commentator requested that the final regulations also provide that administration of an exempt trust as described in these regulations will not cause any trust beneficiary to be treated as making a gift and will not result in any taxable exchange by the trust or any of its beneficiaries. Another commentator requested that the final regulations clarify that changing the situs of a trust from a state with only a traditional definition of income to a state that permits unitrusts or powers to adjust will not affect the exempt status of the trust. *Examples 11* and *12* have been revised to address these and similar concerns. The same conclusions apply to a change of situs in the opposite direction, from a state that permits unitrusts or the power to adjust to a state that has only the traditional definition of income.

Effective Dates

The proposed regulations provide that the final regulations apply for taxable years that begin on or after January 2, 2004. Commentators suggested that, as a number of states have already enacted statutes permitting the trustee to pay to the person entitled to the income a unitrust amount based on a fixed percentage of the fair market value of the trust assets or providing the trustee the discretion to make adjustments between income and principal to treat the beneficiaries impartially, the effective date provision should be changed to allow trustees to take advantage of these statutes for periods beginning before the date of the publication of the final regulations. As an alternative, one commentator suggested that the IRS issue guidance allowing trustees to rely on the proposed regulations prior to the publication of the final regulations.

The final regulations, in general, will become effective for taxable years of trusts and estates ending after January 2, 2004. In addition, taxpayers may rely on the provisions of the final regulations for any taxable years in which a trust or estate is governed by a state statute authorizing a unitrust payment in satisfaction of the income interest of the income beneficiaries or granting the trustee a power to adjust between income and principal, in each case as described in the final regulations.

With respect to CRUTs, the prohibition of a trustee's discretionary power, granted solely by the governing instrument and not by applicable state statute, to allocate to income sales proceeds attributable to appreciation in the value of the asset after the date it was contributed to the trust or purchased by the trust is applicable to trusts created after January 2, 2004.

With respect to PIFs, the provision concerning the failure of net long-term capital gain to qualify for the charitable deduction if the income beneficiaries, under the terms of the governing instrument and the state statute, may receive a unitrust amount or an amount based on unrealized appreciation in the value of the fund's assets is applicable to taxable years of PIFs beginning after January 2, 2004. However, provided income has not already been determined in such a manner, the fund's governing instrument may be amended or reformed to eliminate this possibility. A judicial proceeding to reform the fund's governing instrument must be commenced, or a nonjudicial reformation that is valid under state law must be completed, by the date that is nine months after the later of January 2, 2004 or the effective date of the state statute authorizing determination of income in such a manner.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Bradford R. Poston and Mary Berman of the Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 26

Generation-skipping transfer taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 20, 25, and 26 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

■ **Par. 2.** Section 1.642(c)–2 is amended as follows:

■ 1. Paragraph (c) is amended by adding two sentences after the first sentence.

■ 2. Paragraph (e) is added immediately following paragraph (d).

The additions read as follows:

§ 1.642(c)–2 Unlimited deduction for amounts permanently set aside for a charitable purpose.

* * * * *

(c) * * * No amount of net long-term capital gain shall be considered permanently set aside for charitable purposes if, under the terms of the fund's governing instrument and applicable local law, the trustee has the power, whether or not exercised, to satisfy the income beneficiaries' right to income by the payment of either: an amount equal to a fixed percentage of the fair market value of the fund's assets (whether determined annually or averaged on a multiple year basis); or any amount that takes into account unrealized appreciation in the value of

the fund's assets. In addition, no amount of net long-term capital gain shall be considered permanently set aside for charitable purposes to the extent the trustee distributes proceeds from the sale or exchange of the fund's assets as income within the meaning of § 1.642(c)–5(a)(5)(i). * * *

* * * * *

(e) *Effective dates.* Generally, the second sentence of paragraph (c) of this section, concerning the loss of any charitable deduction for long-term capital gains if the fund's income may be determined by a fixed percentage of the fair market value of the fund's assets or by any amount that takes into account unrealized appreciation in the value of the fund's assets, applies for taxable years beginning after January 2, 2004. In a state whose statute permits income to be determined by reference to a fixed percentage of, or the unrealized appreciation in, the value of the fund's assets, net long-term capital gain of a pooled income fund may be considered to be permanently set aside for charitable purposes if the fund's governing instrument is amended or reformed to eliminate the possibility of determining income in such a manner and if income has not been determined in this manner. For this purpose, a judicial proceeding to reform the fund's governing instrument must be commenced, or a nonjudicial reformation that is valid under state law must be completed, by the date that is nine months after the later of January 2, 2004 or the effective date of the state statute authorizing determination of income in such a manner.

* * * * *

■ **Par. 3.** In § 1.642(c)–5, paragraph (a)(5)(i) is revised to read as follows:

§ 1.642(c)–5 Definition of pooled income fund.

(a) * * *

(5) * * *

(i) The term *income* has the same meaning as it does under section 643(b) and the regulations thereunder, except that income generally may not include any long-term capital gains. However, in conformance with the applicable state statute, income may be defined as or satisfied by a unitrust amount, or pursuant to a trustee's power to adjust between income and principal to fulfill the trustee's duty of impartiality, if the state statute both provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and meets the requirements of § 1.643(b)–1. In exercising a power to adjust, the trustee must allocate to principal, not to income, the proceeds from the sale or exchange of any assets contributed to the fund by any donor or purchased by the fund at least to the extent of the fair market value of those assets on the date of their contribution to the fund or of the purchase price of those assets purchased by the fund. This definition of income applies for taxable years beginning after January 2, 2004.

* * * * *

■ **Par. 4.** Section 1.643(a)–3 is revised to read as follows:

§ 1.643(a)–3 Capital gains and losses.

(a) *In general.* Except as provided in § 1.643(a)–6 and paragraph (b) of this section, gains from the sale or exchange of capital assets are ordinarily excluded from distributable net income and are not ordinarily considered as paid, credited, or required to be distributed to any beneficiary.

(b) *Capital gains included in distributable net income.* Gains from the sale or exchange of capital assets are included in distributable net income to the extent they are, pursuant to the terms of the governing instrument and applicable local law, or pursuant to a reasonable and impartial exercise of discretion by the fiduciary (in accordance with a power granted to the fiduciary by applicable local law or by the governing instrument if not prohibited by applicable local law)—

(1) Allocated to income (but if income under the state statute is defined as, or consists of, a unitrust amount, a discretionary power to allocate gains to income must also be exercised consistently and the amount so allocated may not be greater than the excess of the unitrust amount over the amount of distributable net income determined without regard to this subparagraph § 1.643(a)–3(b));

(2) Allocated to corpus but treated consistently by the fiduciary on the trust's books, records, and tax returns as part of a distribution to a beneficiary; or

(3) Allocated to corpus but actually distributed to the beneficiary or utilized by the fiduciary in determining the amount that is distributed or required to be distributed to a beneficiary.

(c) *Charitable contributions included in distributable net income.* If capital gains are paid, permanently set aside, or to be used for the purposes specified in section 642(c), so that a charitable deduction is allowed under that section in respect of the gains, they must be included in the computation of distributable net income.

(d) *Capital losses.* Losses from the sale or exchange of capital assets shall first be netted at the trust level against any gains from the sale or exchange of capital assets, except for a capital gain that is utilized under paragraph (b)(3) of this section in determining the amount that is distributed or required to be distributed to a particular beneficiary. See § 1.642(h)–1 with respect to capital loss carryovers in the year of final termination of an estate or trust.

(e) *Examples.* The following examples illustrate the rules of this section:

Example 1. Under the terms of Trust's governing instrument, all income is to be paid to A for life. Trustee is given discretionary powers to invade principal for A's benefit and to deem discretionary distributions to be made from capital gains realized during the year. During Trust's first taxable year, Trust has $5,000 of dividend income and $10,000 of capital gain from the sale of securities. Pursuant to the terms of the governing instrument and applicable local law, Trustee allocates the $10,000 capital gain to principal. During the year, Trustee distributes to A $5,000, representing A's right to trust income. In addition, Trustee distributes to A $12,000, pursuant to the discretionary power to distribute principal. Trustee does not exercise the discretionary power to deem the discretionary distributions of principal as being paid from capital gains realized during the year. Therefore, the capital gains realized during the year are not included in distributable net income and the $10,000 of capital gain is taxed to the trust. In future years, Trustee must treat all discretionary distributions as not being made from any realized capital gains.

Example 2. The facts are the same as in *Example 1*, except that Trustee intends to follow a regular practice of treating discretionary distributions of principal as being paid first from any net capital gains realized by Trust during the year. Trustee evidences this treatment by including the $10,000 capital gain in distributable net income on Trust's federal income tax return so that it is taxed to A. This treatment of the capital gains is a reasonable exercise of Trustee's discretion. In future years Trustee must treat all discretionary distributions as being made first from any realized capital gains.

Example 3. The facts are the same as in *Example 1*, except that Trustee intends to follow a regular practice of treating discretionary distributions of principal as being paid from any net capital gains realized by Trust during the year from the sale of certain specified assets or a particular class of investments. This treatment of capital gains is a reasonable exercise of Trustee's discretion.

Example 4. The facts are the same as in *Example 1*, except that pursuant to the terms of the governing instrument (in a provision not prohibited by applicable local law), capital gains realized by Trust are allocated to income. Because the capital gains are allocated to income pursuant to the terms of the governing instrument, the $10,000 capital gain is included in Trust's distributable net income for the taxable year.

Example 5. The facts are the same as in *Example 1*, except that Trustee decides that discretionary distributions will be made only to the extent Trust has realized capital gains during the year and thus the discretionary distribution to A is $10,000, rather than $12,000. Because Trustee will use the amount of any realized capital gain to determine the amount of the discretionary distribution to the beneficiary, the $10,000 capital gain is included in Trust's distributable net income for the taxable year.

Example 6. Trust's assets consist of Blackacre and other property. Under the terms of Trust's governing instrument, Trustee is directed to hold Blackacre for ten years and then sell it and distribute all the sales proceeds to A. Because Trustee uses the amount of the sales proceeds that includes any realized capital gain to determine the amount required to be distributed to A, any capital gain realized from the sale of Blackacre is included in Trust's distributable net income for the taxable year.

Example 7. Under the terms of Trust's governing instrument, all income is to be paid to A during the Trust's term. When A reaches 35, Trust is to terminate and all the principal is to be distributed to A. Because all the assets of the trust, including all capital gains, will be actually distributed to the beneficiary at the termination of Trust, all capital gains realized in the year of termination are included in distributable net income. See § 1.641(b)–3 for the determination of the year of final termination and the taxability of capital gains realized after the terminating event and before final distribution.

Example 8. The facts are the same as *Example 7*, except Trustee is directed to pay B $10,000 before distributing the remainder of Trust assets to A. Because the distribution to B is a gift of a specific sum of money within the meaning of section 663(a)(1), none of Trust's distributable net income that includes all of the capital gains realized during the year of termination is allocated to B's distribution.

Example 9. The facts are the same as *Example 7*, except Trustee is directed to distribute one-half of the principal to A when A reaches 35 and the balance to A when A reaches 45. Trust assets consist entirely of stock in corporation M with a fair market value of $1,000,000 and an adjusted basis of $300,000. When A reaches 35, Trustee sells one-half of the stock and distributes the sales proceeds to A. All the sales proceeds, including all the capital gain attributable to that sale, are actually distributed to A and therefore all the capital gain is included in distributable net income.

Example 10. The facts are the same as *Example 9*, except when A reaches 35, Trustee sells all the stock and distributes one-half of the sales proceeds to A. If authorized by the governing instrument and applicable state statute, Trustee may determine to what extent the capital gain is distributed to A. The $500,000 distribution to A may be treated as including a minimum of $200,000 of capital gain (and all of the principal amount of $300,000) and a maximum of $500,000 of the capital gain (with no principal). Trustee evidences the treatment by including the appropriate amount of capital gain in distributable net income on Trust's federal income tax return. If Trustee is not authorized by the governing instrument and applicable state statutes to determine to what extent the capital gain is distributed to A, one-half of the capital gain attributable to the sale is included in distributable net income.

Example 11. The applicable state statute provides that a trustee may make an election to pay an income beneficiary an amount equal to four percent of the fair market value of the trust assets, as determined at the beginning of each taxable year, in full satisfaction of that beneficiary's right to income. State statute also provides that this unitrust amount shall be considered paid first from ordinary and tax-exempt income, then from net short-term capital gain, then from net long-term capital gain, and finally from return of principal. Trust's governing instrument provides that A is to receive each year income as defined under state statute. Trustee makes the unitrust election under state statute. At the beginning of the taxable year, Trust assets are valued at $500,000. During the year, Trust receives $5,000 of dividend income and realizes $80,000 of net long-term gain from the sale of capital assets. Trustee distributes to A $20,000 (4% of $500,000) in satisfaction of A's right to income. Net long-term capital gain in the amount of $15,000 is allocated to income pursuant to the ordering rule of the state statute and is included in distributable net income for the taxable year.

Example 12. The facts are the same as in *Example 11*, except that neither state statute nor Trust's governing instrument has an ordering rule for the character of the unitrust amount, but leaves such a decision to the discretion of Trustee. Trustee intends to follow a regular practice of treating principal, other than capital gain, as distributed to the beneficiary to the extent that the unitrust amount exceeds Trust's ordinary and tax-exempt income. Trustee evidences this treatment by not including any capital gains in distributable net income on Trust's Federal income tax return so that the entire $80,000 capital gain is taxed to Trust. This treatment of the capital gains is a reasonable exercise of Trustee's discretion. In future years Trustee must consistently follow this treatment of not allocating realized capital gains to income.

Example 13. The facts are the same as in *Example 11*, except that neither state statutes nor Trust's governing instrument has an ordering rule for the character of the unitrust amount, but leaves such a decision to the discretion of Trustee. Trustee intends to follow a regular practice of treating net capital gains as distributed to the beneficiary to the extent the unitrust amount exceeds Trust's ordinary and tax-exempt income. Trustee evidences this treatment by including $15,000 of the capital gain in distributable net income on Trust's Federal income tax return. This treatment of the capital gains is a reasonable exercise of Trustee's discretion. In future years Trustee must consistently treat realized capital gain, if any, as distributed to the beneficiary to the extent that the unitrust amount exceeds ordinary and tax-exempt income.

Example 14. Trustee is a corporate fiduciary that administers numerous trusts. State statutes provide that a trustee may make an election to distribute to an income beneficiary an amount equal to four percent of the annual fair market value of the trust assets in full satisfaction of that beneficiary's right to income. Neither state statutes nor the governing instruments of any of the trusts administered by Trustee has an ordering rule for the character of the unitrust amount, but leaves such a decision to the discretion of Trustee. With respect to some trusts, Trustee intends to follow a regular practice of treating principal, other than capital gain, as distributed to the beneficiary to the extent that the unitrust amount exceeds the trust's ordinary and tax-exempt income. Trustee will evidence this treatment by not including any capital gains in distributable net income on the Federal income tax returns for those trusts. With respect to other trusts, Trustee intends to follow a regular practice of treating any net capital gains as distributed to the beneficiary to the extent the unitrust amount exceeds the trust's ordinary and tax-exempt income. Trustee will evidence this treatment by including net capital gains in distributable net income on the Federal income tax returns filed for these trusts. Trustee's decision with respect to each trust is a reasonable exercise of Trustee's discretion and, in future years, Trustee must treat the capital gains realized by each trust consistently with the treatment by that trust in prior years.

(f) *Effective date.* This section applies for taxable years of trusts and estates ending after January 2, 2004.

■ **Par. 5.** Section 1.643(b)–1 is revised to read as follows:

§ 1.643(b)–1 Definition of income.

For purposes of subparts A through D, part I, subchapter J, chapter 1 of the Internal Revenue Code, ''income,'' when not preceded by the words ''taxable,'' ''distributable net,'' ''undistributed net,'' or ''gross,'' means the amount of income of an estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Trust provisions that depart fundamentally from traditional principles of income and principal will generally not be recognized. For example, if a trust instrument directs that all the trust income shall be paid to the income beneficiary but defines ordinary dividends and interest as principal, the trust will not be considered one that under its governing instrument is required to distribute all its income currently for purposes of section 642(b) (relating to the personal exemption) and section 651 (relating to simple trusts). Thus, items such as dividends, interest, and rents are generally allocated to income and proceeds from the sale or exchange of trust assets are generally allocated to principal. However, an allocation of amounts between income and principal

pursuant to applicable local law will be respected if local law provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust for the year, including ordinary and tax-exempt income, capital gains, and appreciation. For example, a state statute providing that income is a unitrust amount of no less than 3% and no more than 5% of the fair market value of the trust assets, whether determined annually or averaged on a multiple year basis, is a reasonable apportionment of the total return of the trust. Similarly, a state statute that permits the trustee to make adjustments between income and principal to fulfill the trustee's duty of impartiality between the income and remainder beneficiaries is generally a reasonable apportionment of the total return of the trust. Generally, these adjustments are permitted by state statutes when the trustee invests and manages the trust assets under the state's prudent investor standard, the trust describes the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee after applying the state statutory rules regarding the allocation of receipts and disbursements to income and principal, is unable to administer the trust impartially. Allocations pursuant to methods prescribed by such state statutes for apportioning the total return of a trust between income and principal will be respected regardless of whether the trust provides that the income must be distributed to one or more beneficiaries or may be accumulated in whole or in part, and regardless of which alternate permitted method is actually used, provided the trust complies with all requirements of the state statute for switching methods. A switch between methods of determining trust income authorized by state statute will not constitute a recognition event for purposes of section 1001 and will not result in a taxable gift from the trust's grantor or any of the trust's beneficiaries. A switch to a method not specifically authorized by state statute, but valid under state law (including a switch via judicial decision or a binding non-judicial settlement) may constitute a recognition event to the trust or its beneficiaries for purposes of section 1001 and may result in taxable gifts from the trust's grantor and beneficiaries, based on the relevant facts and circumstances. In addition, an allocation to income of all or a part of the gains from the sale or exchange of trust assets will generally be respected if the allocation is made either pursuant to the terms of the governing instrument and applicable local law, or pursuant to a reasonable and impartial exercise of a discretionary power granted to the fiduciary by applicable local law or by the governing instrument, if not prohibited by applicable local law. This section is effective for taxable years of trusts and estates ending after January 2, 2004.

■ **Par. 6.** In § 1.651(a)–2, paragraph (d) is added to read as follows:

§ 1.651(a)–2 Income required to be distributed currently.

* * * * *

(d) If a trust distributes property in kind as part of its requirement to distribute currently all the income as defined under section 643(b) and the applicable regulations, the trust shall be treated as having sold the property for its fair market value on the date of distribution. If no amount in excess of the amount of income as defined under section 643(b) and the applicable regulations is distributed by the trust during the year, the trust will qualify for treatment under section 651 even though property in kind was distributed as part of a distribution of all such income. This paragraph (d) applies for taxable years of trusts ending after January 2, 2004.

■ **Par. 7.** In § 1.661(a)–2, paragraph (f) is revised to read as follows:

§ 1.661(a)–2 Deduction for distributions to beneficiaries.

* * * * *

(f) Gain or loss is realized by the trust or estate (or the other beneficiaries) by reason of a distribution of property in kind if the distribution is in satisfaction of a right to receive a distribution of a specific dollar amount, of specific property other than that distributed, or of income as defined under section 643(b) and the applicable regulations, if income is required to be distributed currently. In addition, gain or loss is realized if the trustee or executor makes the election to recognize gain or loss under section 643(e). This paragraph applies for taxable years of trusts and estates ending after January 2, 2004.

■ **Par. 8.** Section 1.664–3 is amended as follows:

■ 1. Paragraphs (a)(1)(i)(*b*)(*3*) and (*4*) are revised.

■ 2. Paragraph (a)(1)(i)(b)(*5*) is removed.

The revisions read as follows:

§ 1.664–3 Charitable remainder unitrust.

(a) * * *

(1) * * * (i) * * *

(*b*) * * *

(*3*) For purposes of this paragraph (a)(1)(i)(*b*), trust income generally means income as defined under section 643(b) and the applicable regulations. However, trust income may not be determined by reference to a fixed percentage of the annual fair market value of the trust property, notwithstanding any contrary provision in applicable state law. Proceeds from the sale or exchange of any assets contributed to the trust by the donor must be allocated to principal and not to trust income at least to the extent of the fair market value of those assets on the date of their contribution to the trust. Proceeds from the sale or exchange of any assets purchased by the trust must be allocated to principal and not to trust income at least to the extent of the trust's purchase price of those assets. Except as provided in the two preceding sentences, proceeds from the sale or exchange of any assets contributed to the trust by the donor or purchased by the trust may be allocated to income, pursuant to the terms of the governing instrument, if not prohibited by applicable local law. A discretionary power to make this allocation may be granted to the trustee under the terms of the governing instrument but only to the extent that the state statute permits the trustee to make adjustments between income and principal to treat beneficiaries impartially.

(*4*) The rules in paragraph (a)(1)(i)(*b*)(*1*) and (*2*) of this section are applicable for taxable years ending after April 18, 1997. The rule in the first sentence of paragraph (a)(1)(i)(*b*)(*3*) is applicable for taxable years ending after April 18, 1997. The rules in the second, fourth, and fifth sentences of paragraph (a)(1)(i)(*b*)(*3*) are applicable for taxable years ending after January 2, 2004. The rule in the third sentence of paragraph (a)(1)(i)(*b*)(*3*) is applicable for sales or exchanges that occur after April 18, 1997. The rule in the sixth sentence of paragraph (a)(1)(i)(*b*)(*3*) is applicable for trusts created after January 2, 2004.

* * * * *

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ **Par. 9.** The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

■ **Par. 10.** Section 20.2056(b)–5 is amended by adding a new sentence to the end of paragraph (f)(1) to read as follows:

§ 20.2056(b)–5 Marital deduction; life estate with power of appointment in surviving spouse.

* * * * *

(f) * * * (1) * * * In addition, the surviving spouse's interest shall meet the condition set forth in paragraph (a)(1) of this section if the spouse is entitled to income as determined by applicable local law that provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and that meets the requirements of § 1.643(b)–1 of this chapter.

* * * * *

■ **Par. 11.** Section 20.2056(b)–7 is amended by adding a new sentence to the end of paragraph (d)(1) to read as follows:

§ 20.2056(b)–7 Election with respect to life estate for surviving spouse.

* * * * *

(d) * * * (1) * * * A power under applicable local law that permits the trustee to adjust between income and principal to fulfill the trustee's duty of impartiality between the income and remainder beneficiaries that meets the requirements of § 1.643(b)–1 of this chapter will not be considered a power to appoint trust property to a person other than the surviving spouse.

* * * * *

■ **Par. 12.** Section 20.2056(b)–10 is amended by adding a new sentence at the end of the section to read as follows:

§ 20.2056(b)–10 Effective dates.

* * * In addition, the rule in the last sentence of § 20.2056(b)–5(f)(1) and the rule in the last sentence of § 20.2056(b)–7(d)(1) regarding the effect on the spouse's right to income if applicable local law provides for the reasonable apportionment between the income and remainder beneficiaries of the total return of the trust are applicable with respect to trusts for taxable years ending after January 2, 2004.

■ **Par. 13.** Section 20.2056A–5 is amended by adding a new sentence in paragraph (c)(2) after the third sentence to read as follows:

§ 20.2056A–5 Imposition of section 2056A estate tax.

* * * * *

(c) * * *

(2) * * * However, distributions made to the surviving spouse as the income beneficiary in conformance with applicable local law that defines the term income as a unitrust amount (or permits a right to income to be satisfied by such an amount), or that permits the trustee to adjust between principal and income to fulfill the trustee's duty of impartiality between income and principal beneficiaries, will be considered distributions of trust income if applicable local law provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and meets the requirements of § 1.643(b)–1 of this chapter. * * *

* * * * *

■ **Par. 14.** Section 20.2056A–13 is revised to read as follows:

§ 20.2056A–13 Effective dates.

Except as provided in this section, the provisions of §§ 20.2056A–1 through 20.2056A–12 are applicable with respect to estates of decedents dying after August 22, 1995. The rule in the fourth sentence of § 20.2056A–5(c)(2) regarding unitrusts and distributions of income to the surviving spouse in conformance with applicable local law is applicable to trusts for taxable years ending after January 2, 2004.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

■ **Par. 15.** The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

■ **Par. 16.** Section 25.2523(e)–1 is amended by adding a new sentence to the end of paragraph (f)(1) to read as follows:

§ 25.2523(e)–1 Marital deduction; life estate with power of appointment in donee spouse.

* * * * *

(f) * * * (1) * * * In addition, the spouse's interest shall meet the condition set forth in paragraph (a)(1) of this section if the spouse is entitled to income as defined or determined by applicable local law that provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and that meets the requirements of § 1.643(b)–1 of this chapter.

* * * * *

■ **Par. 17.** Section 25.2523(h)–2 is amended by adding a new sentence to the end of the section to read as follows:

§ 25.2523(h)–2 Effective dates.

* * * In addition, the rule in the last sentence of § 25.2523(e)–1(f)(1) regarding the determination of income under applicable local law applies to trusts for taxable years ending after January 2, 2004.

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

■ **Par. 18.** The authority citation for part 26 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

■ **Par. 19.** Section 26.2601–1 is amended as follows:

■ 1. The second and third sentences of paragraph (b)(4)(i) are revised to read as follows.

■ 2. Paragraph (b)(4)(i)(D)(*2*) is amended by adding a new sentence to the end of the paragraph.

■ 3. Paragraph (b)(4)(i)(E) is amended by adding *Examples 11* and *12*.

■ 4. Paragraph (b)(4)(ii) is revised to read as follows.

The additions and revisions read as follows:

§ 26.2601–1 Effective dates.

* * * * *

(b) * * *

(4) * * *(i) * * * In general, unless specifically provided otherwise, the rules contained in this paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. Thus (unless specifically noted), the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of gain for purposes of section 1001.

* * * * *

(D) * * *

(*2*) * * * In addition, administration of a trust in conformance with applicable local law that defines the term income as a unitrust amount (or permits a right to income to be satisfied by such an amount) or that permits the trustee to adjust between principal and income to fulfill the trustee's duty of impartiality between income and principal beneficiaries will not be considered to shift a beneficial interest in the trust, if applicable local law provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and meets the requirements of § 1.643(b)–1 of this chapter.

(E) * * *

Example 11. Conversion of income interest to unitrust interest under state statute. In 1980, Grantor, a resident of State X, established an irrevocable trust for the benefit of Grantor's child, A, and A's issue. The trust provides that trust income is payable to A for life and upon A's death the remainder is to pass to A's issue, per stirpes. In 2002, State X amends its income and principal statute to define income as a unitrust amount of 4% of the fair market value of the trust assets valued annually. For a trust established prior to 2002, the statute provides that the new definition of income will apply only if all the beneficiaries who have an interest in the trust consent to the

change within two years after the effective date of the statute. The statute provides specific procedures to establish the consent of the beneficiaries. A and A's issue consent to the change in the definition of income within the time period, and in accordance with the procedures, prescribed by the state statute. The administration of the trust, in accordance with the state statute defining income to be a 4% unitrust amount, will not be considered to shift any beneficial interest in the trust. Therefore, the trust will not be subject to the provisions of chapter 13 of the Internal Revenue Code. Further, under these facts, no trust beneficiary will be treated as having made a gift for federal gift tax purposes, and neither the trust nor any trust beneficiary will be treated as having made a taxable exchange for federal income tax purposes. Similarly, the conclusions in this example would be the same if the beneficiaries' consent was not required, or, if the change in administration of the trust occurred because the situs of the trust was changed to State X from a state whose statute does not define income as a unitrust amount or if the situs was changed to such a state from State X.

Example 12. Equitable adjustments under state statute. The facts are the same as in *Example 11,* except that in 2002, State X amends its income and principal statute to permit the trustee to make adjustments between income and principal when the trustee invests and manages the trust assets under the state's prudent investor standard, the trust describes the amount that shall or must be distributed to a beneficiary by referring to the trust's income, and the trustee after applying the state statutory rules regarding allocation of receipts between income and principal is unable to administer the trust impartially. The provision permitting the trustees to make these adjustments is effective in 2002 for trusts created at any time. The trustee invests and manages the trust assets under the state's prudent investor standard, and pursuant to authorization in the state statute, the trustee allocates receipts between the income and principal accounts in a manner to ensure the impartial administration of the trust. The administration of the trust in accordance with the state statute will not be considered to shift any beneficial interest in the trust. Therefore, the trust will not be subject to the provisions of chapter 13 of the Internal Revenue Code. Further, under these facts, no trust beneficiary will be treated as having made a gift for federal gift tax purposes, and neither the trust nor any trust beneficiary will be treated as having made a taxable exchange for federal income tax purposes. Similarly, the conclusions in this example would be the same if the change in administration of the trust occurred because the situs of the trust was changed to State X from a state whose statute does not authorize the trustee to make adjustments between income and principal or if the situs was changed to such a state from State X.

(ii) *Effective dates.* The rules in this paragraph (b)(4) are generally applicable on and after December 20, 2000. However, the rule in the last sentence of paragraph (b)(4)(i)(D)(*2*) of this section and *Example 11* and *Example 12* in paragraph (b)(4)(i)(E) of this section regarding the administration of a trust and the determination of income in conformance with applicable state law applies to trusts for taxable years ending after January 2, 2004.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 16, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–31614 Filed 12–30–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9104]

RIN 1545–AY82

Credit for Increasing Research Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the definition of qualified research under section 41(d) for the credit for increasing research activities. These final regulations reflect changes to section 41(d) made by the Tax Reform Act of 1986.

DATES: *Effective Dates:* These regulations are effective January 2, 2004.

Applicability Dates: For dates of applicability of these regulations, *see* § 1.41–4(e) and Effective Dates under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Nicole R. Cimino at (202) 622–3120 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1998, the Treasury Department and the IRS published in the **Federal Register** (63 FR 66503) a notice of proposed rulemaking (REG–10570–97, 1998–2 C.B. 729) under section 41 (1998 proposed regulations) relating to the credit for increasing research activities (research credit). The 1998 proposed regulations addressed, in relevant part, (1) the definition of qualified research under section 41(d), (2) the application of the exclusions from the definition of qualified research, and (3) the application of the shrinking-back rule. Comments responding to the 1998 proposed regulations were received and a public hearing was held on April 29, 1999.

On January 3, 2001, the Treasury Department and the IRS published in the **Federal Register** (66 FR 280) final regulations relating, in relevant part, to the definition of qualified research under section 41(d) (TD 8930). In response to taxpayer concerns regarding TD 8930, on January 31, 2001, the Treasury Department and the IRS published Notice 2001–19 (2001–10 I.R.B. 784), announcing that the Treasury Department and the IRS would review TD 8930 and reconsider comments previously submitted in connection with the finalization of TD 8930. Notice 2001–19 also provided that, upon the completion of the review, the Treasury Department and the IRS would announce changes to the regulations, if any, in the form of proposed regulations.

On December 26, 2001, the Treasury Department and the IRS published in the **Federal Register** (66 FR 66362) a notice of proposed rulemaking (REG–112991–01) reflecting the Treasury Department and the IRS' review of TD 8930 (2001 proposed regulations). Comments responding to the 2001 proposed regulations were received and a public hearing was held on March 27, 2002. After considering the comments received and the statements made at the public hearing, portions of the 2001 proposed regulations are adopted as revised by this Treasury Decision.

Explanation of Provisions

This document amends 26 CFR part 1 to provide revised rules for the research credit under section 41. These final regulations generally retain the provisions of the 2001 proposed regulations but clarify the provisions relating to the requirement in section 41(d)(1)(C) that qualified research be research ''substantially all of the activities of which constitute elements of a process of experimentation.'' These final regulations, however, do not contain final rules for research with respect to computer software ''which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer'' for purposes of section 41(d)(4)(E).

Process of Experimentation—In General

The Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085) (the 1986 Act), which narrowed the definition of the term *qualified research,* amended the definition of qualified research by adding a process of experimentation requirement. Section 41(d)(1) provides

that in order to constitute qualified research, substantially all of the activities of the research must constitute elements of a process of experimentation related to a new or improved function, performance, or reliability or quality. The legislative history to the 1986 Act explained that ''[t]he determination of whether research is undertaken for the purpose of discovering information that is technological in nature depends on whether the process of experimentation utilized in the research fundamentally relies on principles of the physical or biological sciences, engineering, or computer science.'' H.R. Conf. Rep. No. 99–841, at II–71 (1986). The legislative history further explained that the term *process of experimentation* means, ''a process involving the evaluation of more than one alternative designed to achieve a result where the means of achieving that result is uncertain at the outset.'' Id., at II–72. In addition, a process of experimentation may involve developing one or more hypotheses, testing and analyzing those hypotheses (through, for example, modeling or simulation), and refining or discarding the hypotheses as part of a sequential design process to develop the overall component. Id.

The 1998 proposed regulations defined a process of experimentation as ''a process to evaluate more than one alternative designed to achieve a result where the means of achieving that result are uncertain at the outset.'' Further, the 1998 proposed regulations specified that a process of experimentation is a four-step process requiring that the taxpayer: (i) Develop one or more hypotheses designed to achieve the intended result; (ii) design a scientific experiment (that, where appropriate to the particular field of research, is intended to be replicable with an established experimental control) to test and analyze those hypotheses (through, for example, modeling, simulation, or a systematic trial and error methodology); (iii) conduct the experiment and record the results; and (iv) refine or discard the hypotheses as part of a sequential design process to develop or improve the business component. Commentators generally objected to this prescribed four-step test arguing that it would not be appropriate for evaluating the qualification of certain commercial and industrial research activities.

In response to these comments, the Treasury Department and the IRS in TD 8930 provided that taxpayers conducting a process of experimentation may, but were not required to, engage in the four-step process described in the 1998 proposed regulations, but eliminated, for this purpose, the specific recordation requirement. (As an addition to the general recordkeeping requirement under section 6001, TD 8930 instead included a contemporaneous documentation requirement that was intended to be less burdensome than the specific recordation requirement. The contemporaneous documentation requirement in TD 8930 was eliminated in the 2001 proposed regulations.) Consistent with the legislative history, however, TD 8930 retained the underlying process of experimentation requirement in the 1998 proposed regulations by providing that a process of experimentation ''is a process to evaluate more than one alternative designed to achieve a result where the capability or method of achieving that result is uncertain at the outset.''

The 2001 proposed regulations further clarified the definition of a process of experimentation and provided, in relevant part, that ''a process of experimentation is a process designed to evaluate one or more alternatives to achieve a result where the capability or the method of achieving that result, or the appropriate design of that result, is uncertain as of the beginning of the taxpayer's research activities.'' More specifically, however, the general requirement was modified in the 2001 proposed regulations to provide, first, that ''a process of experimentation is a process *designed* to evaluate *one or more* alternatives to achieve a result.'' (Emphasis added). The 2001 proposed regulations also provided that a process of experimentation may exist if a taxpayer performs research to establish the appropriate design of a business component even when the capability and method for developing or improving the business component are not uncertain. The 2001 proposed regulations further stated that a taxpayer's activities do not constitute elements of a process of experimentation where the capability and method of achieving the desired new or improved business component, and the appropriate design of the desired new or improved business component, are readily discernible and applicable as of the beginning of the taxpayer's research activities so that true experimentation in the scientific or laboratory sense would not have to be undertaken to test, analyze, and choose among viable alternatives. Finally, the 2001 proposed regulations emphasized that the determination of whether a taxpayer has engaged in a process of experimentation was dependent on the facts and circumstances of the taxpayer's research activities and, for this purpose, contained three non-dispositive and non-exclusive factors that tend to indicate that a taxpayer has engaged in a process of experimentation.

In response to the 2001 proposed regulations, a number of commentators expressed concern with the rules for the process of experimentation requirement, and, in particular, stated that the rules and terms used (including *uncertainty, appropriate design,* and *readily discernible and applicable*) did not provide clear guidance for the requirement. More specifically, commentators stated that the term *readily discernible and applicable* was highly subjective in nature, and thus arguably could be construed as a variant of the discovery test of TD 8930. In addition, one commentator expressed concern regarding the meaning and scope of the term *uncertain* and suggested adding examples illustrating the factors that tend to indicate that a taxpayer has engaged in a process of experimentation. Another commentator also noted that the 2001 proposed regulations appeared to allow the inclusion of all design costs as qualified research expenditures to the extent that the appropriate design of the desired result is never certain at the outset of the typical design process.

The Treasury Department and the IRS continue to believe that the process of experimentation test requires an evaluation of the facts and circumstances of a taxpayer's research activities. As reflected by the changes made in the 2001 proposed regulations, this requirement is not intended to be inflexible or overly narrow. Nevertheless, the Treasury Department and the IRS continue to believe that the requirement in the 2001 proposed regulations that a process of experimentation is ''a *process* designed to evaluate one or more alternatives to achieve a result'' (emphasis added) implies that research activities must contain certain core elements in order to constitute a process of experimentation within the meaning of section 41(d)(1)(C). These final regulations, therefore, make the following clarifications relating to the process of experimentation requirement in the 2001 proposed regulations.

Process of Experimentation—Requirements

The final regulations retain, but further clarify, the requirement in the 2001 proposed regulations that ''a process of experimentation is a process designed to evaluate one or more alternatives to achieve a result where

the capability or the method of achieving that result, or the appropriate design of that result, is uncertain as of the beginning of the taxpayer's research activities.'' Further, the final regulations emphasize that the taxpayer's activities must be directed at resolving uncertainty regarding the taxpayer's development or improvement of a business component, and that the process of experimentation must fundamentally rely on the principles of the physical or biological sciences, engineering, or computer science in attempting to resolve the uncertainty. Although these concepts are stated explicitly in the 1986 legislative history and are implicit in the statute, they may not have been given appropriate or necessary weight in prior proposed or final guidance on the process of experimentation requirement.

The final regulations, therefore, set out what the Treasury Department and the IRS have concluded to be the core elements of a process of experimentation for purposes of the research credit. As noted above and consistent with the statute's wording which requires purposeful activity (*i.e.*, ''undertaken for the purpose of discovering information''), a taxpayer is required to identify the uncertainty regarding the development or improvement of a business component that is the object of the taxpayer's research activities. A taxpayer is also required to identify one or more alternatives intended to eliminate that uncertainty. Additionally, a taxpayer is required to identify and to conduct a process of evaluating the alternatives. The final regulations provide that such a process may involve, for example, modeling, simulation, or a systematic trial and error methodology.

The final regulations further provide that a process of experimentation ''*must* be an evaluative process and generally *should* be capable of evaluating more than one alternative.'' (Emphasis added). Although the identification and evaluation of more than a single alternative is not required to satisfy the process of experimentation requirement, the Treasury Department and the IRS believe that a taxpayer's activities, in order to qualify for the research credit, generally should be capable of evaluating more than one alternative and, in any event, must be designed to evaluate the alternative, or alternatives, being considered.

The final regulations state that the mere existence of uncertainty regarding the development or improvement of a business component does not indicate that all of a taxpayer's activities undertaken to achieve that new or improved business component constitute a process of experimentation, even if the taxpayer, in fact, does achieve the new or improved business component. The Treasury Department and the IRS believe that the inclusion of a separate process of experimentation requirement in the statute makes this proposition clear. However, the Treasury Department and the IRS have included this clarification in the final regulations out of concern that taxpayers have not been giving sufficient weight to the requirement that a taxpayer engage in a process designed to evaluate one or more alternatives to achieve a result where the capability or the method of achieving that result, or the appropriate design of that result, is uncertain as of the beginning of the taxpayer's research activities. In particular, this clarification is intended to indicate that merely demonstrating that uncertainty has been eliminated (*e.g.*, the achievement of the appropriate design of a business component when such design was uncertain as of the beginning of a taxpayer's activities) is insufficient to satisfy the process of experimentation requirement. A taxpayer bears the burden of demonstrating that its research activities additionally satisfy the process of experimentation requirement.

As noted above, all of the facts and circumstances of a taxpayer's research activities are taken into account to determine whether the taxpayer identified uncertainty concerning the development or improvement of a business component, identified one or more alternatives intended to eliminate that uncertainty, and identified and conducted a process of evaluating the alternatives. Although the final regulations set out the core elements of a process of experimentation, how a taxpayer's qualified research activities will reflect these core elements will depend on the facts and circumstances. These core elements will not necessarily occur in a strict, sequential order. A process of experimentation is an evaluative process, and as such, often involves refining throughout much of the process the taxpayer's understanding of the uncertainty the taxpayer is trying to address, modifying the alternatives being evaluated to eliminate that uncertainty, or modifying the process used to evaluate those alternatives.

Accordingly, the final regulations do not provide detailed guidance as to how the regulatory provisions are to be applied to a given factual situation. Rather, the Treasury Department and the IRS have concluded that the application of these provisions will depend on the specific activities being claimed by a taxpayer as qualified research, the nature of the taxpayer's business and industry, and the uncertainties being addressed by the taxpayer's research activities. The Treasury Department and the IRS believe that additional, industry-specific guidance may be appropriate and request comments on the form of such guidance.

The final regulations do not include the rule contained in the 2001 proposed regulations that a taxpayer's activities do not constitute a process of experimentation where the capability and method of achieving the desired new or improved business component, and the appropriate design of the desired new or improved business component, are readily discernible and applicable as of the beginning of the taxpayer's research activities. A number of commentators expressed concern that this rule was too vague and susceptible to conflicting interpretations. In light of the clarifications made in these final regulations, the Treasury Department and the IRS have concluded that this rule is no longer necessary because such activities do not constitute a process of experimentation under the final regulations.

As noted above, the 2001 proposed regulations do not contain a specific recordkeeping requirement beyond the requirements set out in section 6001 and the regulations thereunder. No change regarding recordkeeping is being made in these final regulations. The clarifications being made to the process of experimentation requirement do not impose any recordkeeping requirement on taxpayers beyond the requirements set out in section 6001 and the regulations thereunder.

Process of Experimentation—Substantially all Requirement

The 2001 proposed regulations retained the rule in TD 8930 that the ''substantially all'' requirement of section 41(d)(1)(C) is satisfied only if 80 percent or more of the research activities, measured on a cost or other consistently applied reasonable basis (and without regard to § 1.41–2(d)(2)), constitute elements of a process of experimentation for a purpose described in section 41(d)(3). This requirement is applied separately to each business component.

The Treasury Department and the IRS requested comments on the application of the substantially all rule and, in particular, whether research expenses incurred for non-qualified purposes (*i.e.,* relating to style, taste, cosmetic, or seasonal design factors) are includible

in the credit computation provided that substantially all of the research activities constitute elements of a process of experimentation for a qualified purpose. After consideration of the comments received, the Treasury Department and the IRS have concluded that the substantially all requirement can be satisfied even if some portion of a taxpayer's activities are not for a qualified purpose.

Accordingly, these final regulations clarify the substantially all rule and provide that the substantially all requirement is satisfied if 20 percent or less of a taxpayer's research activities do not constitute elements of a process of experimentation for a purpose described in section 41(d)(3), so long as these remaining activities satisfy the requirements of section 41(d)(1)(A) and are not otherwise excluded under section 41(d)(4). Example (6) of § 1.41–4(a)(8) of the 2001 proposed regulations has been modified to illustrate the application of this rule, and appears as example (4) in these final regulations.

Other Issues

Patent Safe Harbor

Section 1.41–4(a)(3)(iii) of the 2001 proposed regulations generally provided that the issuance of certain patents is conclusive evidence that a taxpayer has discovered information that is technological in nature that is intended to eliminate uncertainty concerning the development or improvement of a business component. Some commentators requested that this patent safe harbor be expanded to cover all requirements contained in sections 41(d)(1) and (3). After consideration of these comments, and in light of the clarifications being made in these final regulations to the provisions relating to the process of experimentation requirement, the Treasury Department and the IRS continue to believe that the patent safe harbor is appropriately limited and, therefore, have not changed the patent safe harbor provision.

Shrinking-Back Rule

Some commentators expressed concern that the language of the shrinking-back rule in § 1.41–4(b)(2) of the 2001 proposed regulations implied that not all of a taxpayer's qualified research expenses would be eligible for the research credit as a result of the application of the rule. This provision has been revised in these final regulations to clarify that the rule is not intended to exclude qualified research expenses from the credit, but rather is intended to ensure that expenses attributable to qualified research activities are eligible for the research credit for purposes of section 41(d)(1).

Research After Commercial Production

Some commentators requested additional clarification regarding the scope of the research after commercial production, adaptation, and duplication exclusions set out in section 41(d)(4)(A), (B) and (C), and § 1.41–4(c)(2), (3) and (4) of the 2001 proposed regulations. After consideration of these comments, the Treasury Department and the IRS believe that the multitude of factual situations to which these exclusions might apply make it impractical to provide additional clarification that is both meaningful and of broad application. The Treasury Department and the IRS believe these three specific exclusions do not cover research activities that otherwise satisfy the requirements for qualified research. Taxpayers, however, should carefully review (including, as appropriate, the application of the shrinking-back rule) research activities that might otherwise fall within these exclusions to ensure that only eligible activities are being included in their credit computations.

One commentator expressed concern that the language of § 1.41–4(c)(2)(iv), relating to the clinical testing of pharmaceutical products, could exclude from credit eligibility clinical trials performed under an arrangement where the Food and Drug Administration has granted conditional approval for a pharmaceutical product contingent upon the results of additional clinical trials. Another commentator expressed concern that the language would exclude otherwise qualifying activities because the research was not required to be approved by the Food and Drug Administration. Section 1.41–4(c)(2)(iv) is not a rule of exclusion. As stated above, the Treasury Department and the IRS believe that the research after commercial production exclusion (as well as the adaptation and duplication exclusions) do not cover research activities, including these additional clinical trials, so long as such trials satisfy the requirements for qualified research.

Gross Receipts

These final regulations retain the broad definition of gross receipts contained in TD 8930. In response to Notice 2001–19, a number of commentators reiterated earlier comments that this definition was overly broad. As stated in the preamble to the 2001 proposed regulations, the Treasury Department and the IRS continue to believe that the definition of gross receipts should be construed broadly, and, accordingly, no change has been made in these final regulations to the definition contained in TD 8930.

Examples

The examples in the regulations have been changed to remove references to ''readily discernible and applicable.'' While the Treasury Department and the IRS continue to believe that the activities in *Examples 4* and *5* of § 1.41–4(a)(8) of the 2001 proposed regulations would not qualify under the final regulations, these examples were removed as the only purpose of these examples was to illustrate the ''readily discernable and applicable'' standard. Minor changes to the facts in *Example 4* of § 1.41–4(a)(8) in the final regulations (*Example 6* of § 1.41–4(a)(8) of the 2001 proposed regulations) were made to illustrate more clearly the application of the substantially all requirement of § 1.41–4(a)(6). These changes do not indicate that the Treasury Department and the IRS believe that the integration activities removed from the example, as contained in the 2001 proposed regulations, are or are not qualified activities standing alone. The determination of whether activities are qualified research is based on the specific facts and circumstances of those activities.

Additionally, minor changes were made to the examples in § 1.41–4(c)(10) to remove references to ''readily discernable and applicable'' and to make some clarifications based on comments received. *Example 1* of § 1.41–4(c)(10) was modified to remove the conclusion regarding qualification of expenses under section 174. Although the Treasury Department and the IRS continue to believe that the conclusion in the 2001 proposed regulations is correct, the Treasury Department and the IRS believe that the point illustrated in the removed portion of the example would be more appropriately addressed in guidance issued under section 174, rather than in guidance under section 41.

Effective Date

Notice 2001–19 stated, in relevant part, that the provisions of TD 8930, including any changes to TD 8930, would be effective no earlier than the date when the completion of the Treasury Department and the IRS' review of TD 8930 was announced. The 2001 proposed regulations provided, in relevant part, that final regulations would apply to taxable years ending on or after December 26, 2001, the date the proposed regulations were published in the **Federal Register.**

Because these final regulations only clarify the provisions of the 2001 proposed regulations, these final regulations apply to taxable years ending on or after December 31, 2003. For taxable years ending before December 31, 2003, the IRS will not challenge return positions that are consistent with these final regulations.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Act Analysis is not required. Pursuant to section 7805(f), the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Nicole R. Cimino of the Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART I—INCOME TAXES

■ **Paragraph 1.** The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

■ **Par. 2.** Section 1.41–0 is amended by revising the entry for § 1.41–4 to read as follows:

The revision reads as follows:

§ 1.41–0 Table of contents.

* * * * *

§ 1.41–4 Qualified research for expenditures paid or incurred in taxable years ending on or after December 31, 2003.

(a) Qualified research.
(1) General rule.
(2) Requirements of section 41(d)(1).
(3) Undertaken for the purpose of discovering information.
(i) In general.
(ii) Application of the discovering information requirement.
(iii) Patent safe harbor.
(4) Technological in nature.
(5) Process of experimentation.
(i) In general.
(ii) Qualified purpose.
(6) Substantially all requirement.
(7) Use of computers and information technology.
(8) Illustrations.
(b) Application of requirements for qualified research.
(1) In general.
(2) Shrinking-back rule.
(3) Illustration.
(c) Excluded activities.
(1) In general.
(2) Research after commercial production.
(i) In general.
(ii) Certain additional activities related to the business component.
(iii) Activities related to production process or technique.
(iv) Clinical testing.
(3) Adaptation of existing business components.
(4) Duplication of existing business component.
(5) Surveys, studies, research relating to management functions, etc.
(6) Internal use software for taxable years beginning on or after December 31, 1985. [Reserved].
(7) Activities outside the United States, Puerto Rico, and other possessions.
(i) In general.
(ii) Apportionment of in-house research expenses.
(iii) Apportionment of contract research expenses.
(8) Research in the social sciences, etc.
(9) Research funded by any grant, contract, or otherwise.
(10) Illustrations.
(d) Recordkeeping for the research credit.
(e) Effective dates.

* * * * *

■ **Par. 3.** Section 1.41–4 is amended as follows:

■ 1. The section heading and paragraphs (a)(2)(iii), (a)(3), (a)(4), (a)(5), (a)(6), (a)(8), (b)(2), (b)(3), (c)(2)(iv), (c)(4), (c)(7)(ii), (c)(10), (d), and (e) are revised.

■ 2. The heading of paragraph (c)(6) is revised and the text is removed and reserved.

The revisions read as follows:

§ 1.41–4 Qualified research for expenditures paid or incurred in taxable years ending on or after December 31, 2003.

(a) * * *

(2) * * *

(iii) Substantially all of the activities of which constitute elements of a process of experimentation that relates to a qualified purpose.

(3) *Undertaken for the purpose of discovering information*—(i) *In general.* For purposes of section 41(d) and this section, research must be undertaken for the purpose of discovering information that is technological in nature. Research is undertaken for the purpose of discovering information if it is intended to eliminate uncertainty concerning the development or improvement of a business component. Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the business component, or the appropriate design of the business component.

(ii) *Application of the discovering information requirement.* A determination that research is undertaken for the purpose of discovering information that is technological in nature does not require the taxpayer be seeking to obtain information that exceeds, expands or refines the common knowledge of skilled professionals in the particular field of science or engineering in which the taxpayer is performing the research. In addition, a determination that research is undertaken for the purpose of discovering information that is technological in nature does not require that the taxpayer succeed in developing a new or improved business component.

(iii) *Patent safe harbor.* For purposes of section 41(d) and paragraph (a)(3)(i) of this section, the issuance of a patent by the Patent and Trademark Office under the provisions of 35 U.S.C. 151 (other than a patent for design issued under the provisions of 35 U.S.C. 171) is conclusive evidence that a taxpayer has discovered information that is technological in nature that is intended to eliminate uncertainty concerning the development or improvement of a business component. However, the issuance of such a patent is not a precondition for credit availability.

(4) *Technological in nature.* For purposes of section 41(d) and this section, information is technological in nature if the process of experimentation used to discover such information fundamentally relies on principles of the physical or biological sciences, engineering, or computer science. A taxpayer may employ existing technologies and may rely on existing principles of the physical or biological sciences, engineering, or computer science to satisfy this requirement.

(5) *Process of experimentation*—(i) *In general.* For purposes of section 41(d) and this section, a process of experimentation is a process designed to evaluate one or more alternatives to achieve a result where the capability or

the method of achieving that result, or the appropriate design of that result, is uncertain as of the beginning of the taxpayer's research activities. A process of experimentation must fundamentally rely on the principles of the physical or biological sciences, engineering, or computer science and involves the identification of uncertainty concerning the development or improvement of a business component, the identification of one or more alternatives intended to eliminate that uncertainty, and the identification and the conduct of a process of evaluating the alternatives (through, for example, modeling, simulation, or a systematic trial and error methodology). A process of experimentation must be an evaluative process and generally should be capable of evaluating more than one alternative. A taxpayer may undertake a process of experimentation if there is no uncertainty concerning the taxpayer's capability or method of achieving the desired result so long as the appropriate design of the desired result is uncertain as of the beginning of the taxpayer's research activities. Uncertainty concerning the development or improvement of the business component (*e.g.*, its appropriate design) does not establish that all activities undertaken to achieve that new or improved business component constitute a process of experimentation.

(ii) *Qualified purpose.* For purposes of section 41(d) and this section, a process of experimentation is undertaken for a qualified purpose if it relates to a new or improved function, performance, reliability or quality of the business component. Research will not be treated as conducted for a qualified purpose if it relates to style, taste, cosmetic, or seasonal design factors.

(6) *Substantially all requirement.* In order for activities to constitute qualified research under section 41(d)(1), substantially all of the activities must constitute elements of a process of experimentation that relates to a qualified purpose. The substantially all requirement of section 41(d)(1)(C) and paragraph (a)(2)(iii) of this section is satisfied only if 80 percent or more of a taxpayer's research activities, measured on a cost or other consistently applied reasonable basis (and without regard to section 1.41–2(d)(2)), constitute elements of a process of experimentation for a purpose described in section 41(d)(3). Accordingly, if 80 percent (or more) of a taxpayer's research activities with respect to a business component constitute elements of a process of experimentation for a purpose described in section 41(d)(3), the substantially all requirement is satisfied even if the remaining 20 percent (or less) of a taxpayer's research activities with respect to the business component do not constitute elements of a process of experimentation for a purpose described in section 41(d)(3), so long as these remaining research activities satisfy the requirements of section 41(d)(1)(A) and are not otherwise excluded under section 41(d)(4). The substantially all requirement is applied separately to each business component.

* * * * *

(8) *Illustrations.* The following examples illustrate the application of paragraph (a)(5) of this section:

Example 1. (i) *Facts.* X is engaged in the business of developing and manufacturing widgets. X wants to change the color of its blue widget to green. X obtains from various suppliers several different shades of green paint. X paints several sample widgets, and surveys X's customers to determine which shade of green X's customers prefer.

(ii) *Conclusion.* X's activities to change the color of its blue widget to green are not qualified research under section 41(d)(1) and paragraph (a)(5) of this section because substantially all of X's activities are not undertaken for a qualified purpose. All of X's research activities are related to style, taste, cosmetic, or seasonal design factors.

Example 2. (i) *Facts.* The facts are the same as in *Example 1,* except that X chooses one of the green paints. X obtains samples of the green paint from a supplier and determines that X must modify its painting process to accommodate the green paint because the green paint has different characteristics from other paints X has used. X obtains detailed data on the green paint from X's paint supplier. X also consults with the manufacturer of X's paint spraying machines. The manufacturer informs X that X must acquire a new nozzle that operates with the green paint X wants to use. X tests the nozzles to ensure that they work as specified by the manufacturer of the paint spraying machines.

(ii) *Conclusion.* X's activities to modify its painting process are a separate business component under section 41(d)(2)(A). X's activities to modify its painting process to change the color of its blue widget to green are not qualified research under section 41(d)(1) and paragraph (a)(5) of this section. X did not conduct a process of evaluating alternatives in order to eliminate uncertainty regarding the modification of its painting process. Rather, the manufacturer of the paint machines eliminated X's uncertainty regarding the modification of its painting process. X's activities to test the nozzles to determine if the nozzles work as specified by the manufacturer of the paint spraying machines are in the nature of routine or ordinary testing or inspection for quality control.

Example 3. (i) *Facts.* X is engaged in the business of manufacturing food products and currently manufactures a large-shred version of a product. X seeks to modify its current production line to permit it to manufacture both a large-shred version and a fine-shred version of one of its food products. A smaller, thinner shredding blade capable of producing a fine-shred version of the food product, however, is not commercially available. Thus, X must develop a new shredding blade that can be fitted onto its current production line. X is uncertain concerning the design of the new shredding blade, because the material used in its existing blade breaks when machined into smaller, thinner blades. X engages in a systematic trial and error process of analyzing various blade designs and materials to determine whether the new shredding blade must be constructed of a different material from that of its existing shredding blade and, if so, what material will best meet X's functional requirements.

(ii) *Conclusion.* X's activities to modify its current production line by developing the new shredding blade meet the requirements of qualified research as set forth in paragraph (a)(2) of this section. Substantially all of X's activities constitute elements of a process of experimentation because X evaluated alternatives to achieve a result where the method of achieving that result, and the appropriate design of that result, were uncertain as of the beginning of the taxpayer's research activities. X identified uncertainties related to the development of a business component, and identified alternatives intended to eliminate these uncertainties. Furthermore, X's process of evaluating identified alternatives was technological in nature, and was undertaken to eliminate the uncertainties.

Example 4. (i) *Facts.* X is in the business of designing, developing and manufacturing automobiles. In response to government-mandated fuel economy requirements, X seeks to update its current model vehicle and undertakes to improve aerodynamics by lowering the hood of its current model vehicle. X determines, however, that lowering the hood changes the air flow under the hood, which changes the rate at which air enters the engine through the air intake system, and which reduces the functionality of the cooling system. X's engineers are uncertain how to design a lower hood to obtain the increased fuel economy, while maintaining the necessary air flow under the hood. X designs, models, simulates, tests, refines, and re-tests several alternative designs for the hood and associated proposed modifications to both the air intake system and cooling system. This process enables X to eliminate the uncertainties related to the integrated design of the hood, air intake system, and cooling system, and such activities constitute eighty-five percent of X's total activities to update its current model vehicle. X then engages in additional activities that do not involve a process of evaluating alternatives in order to eliminate uncertainties. The additional activities constitute only fifteen percent of X's total activities to update its current model vehicle.

(ii) *Conclusion.* In general, if eighty percent or more of a taxpayer's research activities measured on a cost or other consistently applied reasonable basis constitute elements of a process of experimentation for a qualified purpose under section 41(d)(3)(A) and paragraph (a)(5)(ii) of this section, then

the substantially all requirement of section 41(d)(1)(C) and paragraph (a)(2)(iii) of this section is satisfied. Substantially all of X's activities constitute elements of a process of experimentation because X evaluated alternatives to achieve a result where the method of achieving that result, and the appropriate design of that result, were uncertain as of the beginning of X's research activities. X identified uncertainties related to the improvement of a business component and identified alternatives intended to eliminate these uncertainties. Furthermore, X's process of evaluating the identified alternatives was technological in nature and was undertaken to eliminate the uncertainties. Because substantially all (in this example, eighty-five percent) of X's activities to update its current model vehicle constitute elements of a process of experimentation for a qualified purpose described in section 41(d)(3)(A), all of X's activities to update its current model vehicle meet the requirements of qualified research as set forth in paragraph (a)(2) of this section, provided that X's remaining activities (in this example, fifteen percent of X's total activities) satisfy the requirements of section 41(d)(1)(A) and are not otherwise excluded under section 41(d)(4).

(b) * * *

(2) *Shrinking-back rule.* The requirements of section 41(d) and paragraph (a) of this section are to be applied first at the level of the discrete business component, that is, the product, process, computer software, technique, formula, or invention to be held for sale, lease, or license, or used by the taxpayer in a trade or business of the taxpayer. If these requirements are not met at that level, then they apply at the most significant subset of elements of the product, process, computer software, technique, formula, or invention to be held for sale, lease, or license. This shrinking back of the product is to continue until either a subset of elements of the product that satisfies the requirements is reached, or the most basic element of the product is reached and such element fails to satisfy the test. This shrinking-back rule is applied only if a taxpayer does not satisfy the requirements of section 41(d)(1) and paragraph (a)(2) of this section with respect to the overall business component. The shrinking-back rule is not itself applied as a reason to exclude research activities from credit eligibility.

(3) *Illustration.* The following example illustrates the application of this paragraph (b):

Example. X, a motorcycle engine builder, develops a new carburetor for use in a motorcycle engine. X also modifies an existing engine design for use with the new carburetor. Under the shrinking-back rule, the requirements of section 41(d)(1) and paragraph (a) of this section are applied first to the engine. If the modifications to the engine when viewed as a whole, including the development of the new carburetor, do not satisfy the requirements of section 41(d)(1) and paragraph (a) of this section, those requirements are applied to the next most significant subset of elements of the business component. Assuming that the next most significant subset of elements of the engine is the carburetor, the research activities in developing the new carburetor may constitute qualified research within the meaning of section 41(d)(1) and paragraph (a) of this section.

(c) * * *

(2) * * *

(iv) *Clinical testing.* Clinical testing of a pharmaceutical product prior to its commercial production in the United States is not treated as occurring after the beginning of commercial production even if the product is commercially available in other countries. Additional clinical testing of a pharmaceutical product after a product has been approved for a specific therapeutic use by the Food and Drug Administration and is ready for commercial production and sale is not treated as occurring after the beginning of commercial production if such clinical testing is undertaken to establish new functional uses, characteristics, indications, combinations, dosages, or delivery forms for the product. A functional use, characteristic, indication, combination, dosage, or delivery form shall be considered new only if such functional use, characteristic, indication, combination, dosage, or delivery form must be approved by the Food and Drug Administration.

* * * * *

(4) *Duplication of existing business component.* Activities relating to reproducing an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information about the business component are not qualified research. This exclusion does not apply merely because the taxpayer examines an existing business component in the course of developing its own business component.

* * * * *

(6) *Internal use software for taxable years beginning on or after December 31, 1985.* [Reserved].

(7) * * *

(ii) *Apportionment of in-house research expenses.* In-house research expenses paid or incurred for qualified services performed both in the United States, the Commonwealth of Puerto Rico and other possessions of the United States and outside the United States, the Commonwealth of Puerto Rico and other possessions of the United States must be apportioned between the services performed in the United States, the Commonwealth of Puerto Rico and other possessions of the United States and the services performed outside the United States, the Commonwealth of Puerto Rico and other possessions of the United States. Only those in-house research expenses apportioned to the services performed within the United States, the Commonwealth of Puerto Rico and other possessions of the United States are eligible to be treated as qualified research expenses, unless the in-house research expenses are wages and the 80 percent rule of § 1.41–2(d)(2) applies.

* * * * *

(10) *Illustrations.* The following examples illustrate provisions contained in paragraphs (c)(1) through (9) (excepting paragraphs (c)(6) of this section) of this section. No inference should be drawn from these examples concerning the application of section 41(d)(1) and paragraph (a) of this section to these facts. The examples are as follows:

Example 1. (i) *Facts.* X, a tire manufacturer, develops a new material to use in its tires. X conducts research to determine the changes that will be necessary for X to modify its existing manufacturing processes to manufacture the new tire. X determines that the new tire material retains heat for a longer period of time than the materials X currently uses for tires, and, as a result, the new tire material adheres to the manufacturing equipment during tread cooling. X evaluates several alternatives for processing the treads at cooler temperatures to address this problem, including a new type of belt for its manufacturing equipment to be used in tread cooling. Such a belt is not commercially available. Because X is uncertain of the belt design, X develops and conducts sophisticated engineering tests on several alternative designs for a new type of belt to be used in tread cooling until X successfully achieves a design that meets X's requirements. X then manufactures a set of belts for its production equipment, installs the belts, and tests the belts to make sure they were manufactured correctly.

(ii) *Conclusion.* X's research with respect to the design of the new belts to be used in its manufacturing of the new tire may be qualified research under section 41(d)(1) and paragraph (a) of this section. However, X's expenses to implement the new belts, including the costs to manufacture, install, and test the belts were incurred after the belts met the taxpayer's functional and economic requirements and are excluded as research after commercial production under section 41(d)(4)(A) and paragraph (c)(2) of this section.

Example 2. (i) *Facts.* For several years, X has manufactured and sold a particular kind of widget. X initiates a new research project to develop a new or improved widget.

(ii) *Conclusion.* X's activities to develop a new or improved widget are not excluded from the definition of qualified research under section 41(d)(4)(A) and paragraph (c)(2) of this section. X's activities relating to the development of a new or improved widget constitute a new research project to develop a new business component. X's research activities relating to the development of the new or improved widget, a new business component, are not considered to be activities conducted after the beginning of commercial production under section 41(d)(4)(A) and paragraph (c)(2) of this section.

Example 3. (i) *Facts.* X, a computer software development firm, owns all substantial rights in a general ledger accounting software core program that X markets and licenses to customers. X incurs

expenditures in adapting the core software program to the requirements of C, one of X's customers.

(ii) *Conclusion.* Because X's activities represent activities to adapt an existing software program to a particular customer's requirement or need, X's activities are excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section.

Example 4. (i) *Facts.* The facts are the same as in *Example 3*, except that C pays X to adapt the core software program to C's requirements.

(ii) *Conclusion.* Because X's activities are excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section, C's payments to X are not for qualified research and are not considered to be contract research expenses under section 41(b)(3)(A).

Example 5. (i) *Facts.* The facts are the same as in *Example 3*, except that C's own employees adapt the core software program to C's requirements.

(ii) *Conclusion.* Because C's employees' activities to adapt the core software program to C's requirements are excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section, the wages C paid to its employees do not constitute in-house research expenses under section 41(b)(2)(A).

Example 6. (i) *Facts.* X manufacturers and sells rail cars. Because rail cars have numerous specifications related to performance, reliability and quality, rail car designs are subject to extensive, complex testing in the scientific or laboratory sense. B orders passenger rail cars from X. B's rail car requirements differ from those of X's other existing customers only in that B wants fewer seats in its passenger cars and a higher quality seating material and carpet that are commercially available. X manufactures rail cars meeting B's requirements.

(ii) *Conclusion.* X's activities to manufacture rail cars for B are excluded from the definition of qualified research. The rail car sold to B was not a new business component, but merely an adaptation of an existing business component that did not require a process of experimentation. Thus, X's activities to manufacture rail cars for B are excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section because X's activities represent activities to adapt an existing business component to a particular customer's requirement or need.

Example 7. (i) *Facts.* X, a manufacturer, undertakes to create a manufacturing process for a new valve design. X determines that it requires a specialized type of robotic equipment to use in the manufacturing process for its new valves. Such robotic equipment is not commercially available, and X, therefore, purchases the existing robotic equipment for the purpose of modifying it to meet its needs. X's engineers identify uncertainty that is technological in nature concerning how to modify the existing robotic equipment to meet its needs. X's engineers develop several alternative designs, and conduct experiments using modeling and simulation in modifying the robotic equipment and conduct extensive scientific and laboratory testing of design alternatives. As a result of this process, X's engineers develop a design for the robotic equipment that meets X's needs. X constructs and installs the modified robotic equipment on its manufacturing process.

(ii) *Conclusion.* X's research activities to determine how to modify X's robotic equipment for its manufacturing process are not excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section, provided that X's research activities satisfy the requirements of section 41(d)(1).

Example 8. (i) *Facts.* An existing gasoline additive is manufactured by Y using three ingredients, A, B, and C. X seeks to develop and manufacture its own gasoline additive that appears and functions in a manner similar to Y's additive. To develop its own additive, X first inspects the composition of Y's additive, and uses knowledge gained from the inspection to reproduce A and B in the laboratory. Any differences between ingredients A and B that are used in Y's additive and those reproduced by X are insignificant and are not material to the viability, effectiveness, or cost of A and B. X desires to use with A and B an ingredient that has a materially lower cost than ingredient C. Accordingly, X engages in a process of experimentation to develop, analyze and test potential alternative formulations of the additive.

(ii) *Conclusion.* X's activities in analyzing and reproducing ingredients A and B involve duplication of existing business components and are excluded from the definition of qualified research under section 41(d)(4)(C) and paragraph (c)(4) of this section. X's experimentation activities to develop potential alternative formulations of the additive do not involve duplication of an existing business component and are not excluded from the definition of qualified research under section 41(d)(4)(C) and paragraph (c)(4) of this section.

Example 9. (i) *Facts.* X, a manufacturing corporation, undertakes to restructure its manufacturing organization. X organizes a team to design an organizational structure that will improve X's business operations. The team includes X's employees as well as outside management consultants. The team studies current operations, interviews X's employees, and studies the structure of other manufacturing facilities to determine appropriate modifications to X's current business operations. The team develops a recommendation of proposed modifications which it presents to X's management. X's management approves the team's recommendation and begins to implement the proposed modifications.

(ii) *Conclusion.* X's activities in developing and implementing the new management structure are excluded from the definition of qualified research under section 41(d)(4)(D) and paragraph (c)(5) of this section. Qualified research does not include activities relating to management functions or techniques including management organization plans and management-based changes in production processes.

Example 10. (i) *Facts.* X, an insurance company, develops a new life insurance product. In the course of developing the product, X engages in research with respect to the effect of pricing and tax consequences on demand for the product, the expected volatility of interest rates, and the expected mortality rates (based on published data and prior insurance claims).

(ii) *Conclusion.* X's activities related to the new product represent research in the social sciences (including economics and business management) and are thus excluded from the definition of qualified research under section 41(d)(4)(G) and paragraph (c)(8) of this section.

(d) *Recordkeeping for the research credit.* A taxpayer claiming a credit under section 41 must retain records in sufficiently usable form and detail to substantiate that the expenditures claimed are eligible for the credit. For the rules governing record retention, see § 1.6001–1. To facilitate compliance and administration, the IRS and taxpayers may agree to guidelines for the keeping of specific records for purposes of substantiating research credits.

(e) *Effective dates.* This section is applicable for taxable years ending on or after December 31, 2003.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by removing the entry from the table for § 1.41–4(d).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Pamela Olson,

Assistant Secretary of the Treasury.

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AB48

Sale and Disposal of National Forest System Timber; Extension of Timber Sale Contracts To Facilitate Urgent Timber Removal From Other Lands

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting regulations to provide authority for Regional Foresters to authorize Contracting Officers to extend the contract performance time on certain

National Forest System (NFS) timber sale contracts to facilitate the harvest of damaged timber from private or other non-National Forest System (non-NFS) lands. These contract extensions will allow the expeditious removal of timber from lands in other ownerships damaged by catastrophic events beyond the landowner's control. Catastrophic events include, but are not limited to, severe wildfire, flood, insect and disease infestations, drought, and windthrow. This final rule also provides for adjustment of future periodic payment determination dates as an element of these contract extensions.

The intended effects of this final rule are to promote the wise use and conservation of the Nation's natural resources, to reduce the threat to public safety and property due to fire and hazardous dead trees, and to improve protection of NFS lands from fire and disease that could otherwise develop on the damaged lands. The Forest Service timber sale contract provides additional contract time on undamaged (green) NFS timber sales to permit the purchaser to harvest damaged timber outside the sale area on NFS lands. However, without adoption of the previously published interim rule and this final rule, the Forest Service would not have the regulatory authority to provide additional contract time on NFS timber sales to permit the purchaser to harvest damaged timber from private or other non-NFS lands. This provides purchasers of NFS timber sales, who do not have mills, loggers and mill owners the opportunity to delay harvest of green sales while logging damaged timber on other ownerships. An urgent removal extension will not be approved for any NFS timber sale contracts on lands that contain dead or dying timber subject to rapid deterioration; where delayed harvesting will cause resource damage; or where extensions would delay the completion of needed projects, or adversely impact the harvest of damaged NFS timber, or in any other manner adversely impact the management of NFS lands.

EFFECTIVE DATE: This final rule is effective February 2, 2004.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Forests and Rangelands Management Staff, (202) 205–0855.

SUPPLEMENTARY INFORMATION:

Background

In order to facilitate the expeditious removal of timber in other ownerships damaged by catastrophic events beyond the landowner's control, the Forest Service promulgated an interim rule at §§ 223.50 and 223.53 of Title 36 of the Code of Federal Regulations and requested public comment on November 21, 2002 (67 FR 70165). The comment period ended January 21, 2003. The interim rule provided authority for Regional Foresters to authorize Contracting Officers to extend the contract performance time on certain National Forest System (NFS) timber sale contracts and to delay periodic payments on the extended contracts. This final rule incorporates revisions to § 223.53 in response to comments received on the interim rule. Section 223.50 of the interim rule is adopted in entirety in the final rule.

Periodically, catastrophic events such as severe drought conditions, insect and disease outbreaks, wildfires, floods, and windthrow occur on forested lands within, or near, NFS lands. As a result of such catastrophic events, substantial amounts of private and other public timber may be severely damaged. This damaged timber must be harvested within a relatively short time period to avoid substantial losses due to deterioration in both the quantity and quality of the timber. The critical time period for harvesting this damaged timber and avoiding substantial deterioration varies with the season of the year, the species of timber, the damaging agent, and the location of the damaged timber. In most cases, substantial deterioration can be avoided if the damaged timber is harvested within 1 year of the catastrophic event. The number of wildfires, and the extent of damage to public and private forested land experienced in the last few years, has resulted in renewed requests by forest products companies and forest industry associations for the Forest Service to adjust its contracting procedures to support expeditious removal of damaged timber on non-NFS lands.

Regulatory and Administrative Framework

The National Forest Management Act of 1976 (16 U.S.C. 472a(c)) provides that timber sale contracts with an original term of 2 years or more shall not be extended unless the Secretary finds that the purchaser has diligently performed in accordance with an approved plan of operations or that the substantial overriding public interest justifies an extension. These related requirements are set out at § 223.115.

The Forest Service timber sale contract provides additional contract time on undamaged (green) NFS timber sales to permit the purchaser to harvest damaged timber outside the sale area on NFS lands. However, without adoption of the previously published interim rule (67 FR 70165) and this final rule, the Forest Service would not have the authority to provide additional contract time on NFS timber sales to permit the purchaser to harvest damaged timber from private or other non-NFS lands.

Impediments to Timely Harvest

When significant catastrophic events occur on non-NFS lands, timber sale purchasers often do not have the personnel, equipment, or mill capacity to take on new contracts because all of their resources are committed to NFS contracts. Thus, landowners who have suffered from catastrophic events may be unable to find available loggers, buyers, and mill capacity to remove damaged timber before it deteriorates.

Risks and Benefits Associated With Removal of Damaged Timber

Damaged timber can provide a source of highly flammable fuel for future wildfires, with inherent risks to public safety and property as well as to resource values of any nearby NFS lands. Damaged timber can also provide a habitat conducive to the development of insect infestations and subsequent diseases that could threaten nearby undamaged (green) timber stands on private, NFS, or other public land.

Summary of Public Comments

Comments were received on the interim rule from four timber sale purchasers, four timber industry associations, one association that represents State Foresters, and three State governments. All respondents strongly supported urgent removal extensions, and all but four recommended clarifications to improve the rule. A summary of the comments and the Department's response follows:

General comments. Two respondents suggested that guidance be provided in the rule, or in Forest Service Manual and Handbook direction, to assure that the Forest Service implements the rule as the Department intends. Specifically, the respondents were concerned that: (1) The rule was not specific enough for purchasers to determine with certainty, in advance of purchasing non-NFS timber sales, the likelihood of getting needed extensions of Forest Service timber sales; (2) the Forest Service may not approve urgent removal extensions in a timely manner, once salvage sales on non-NFS lands are purchased; and (3) the Forest Service may interpret the provisions of § 223.53(d)(1)–(4) of the interim rule so broadly that few sales will be eligible for an urgent removal extension.

Response. The Forest Service will address these issues in the Forest

Service Handbook (FSH) 2409.15, Timber Sale Administration. The FSH direction will require the Regional Forester and the Contracting Officer to act promptly in response to urgent removal extension requests. The FSH direction will require that the Regional Forester evaluate the size and scope of an event and the impact on the loggers and mill capability to be able to log National Forest green sales without adversely impairing the harvesting of the damaged timber on private lands. Direction in FSH 2409.15 will also provide that purchasers who submit the required documentation may request a determination of whether their sales qualify for urgent removal extensions prior to purchasing non-NFS timber.

Even though a catastrophic event has occurred and the Regional Forester has authorized urgent removal extensions, § 223.53(d)(1) does not entitle a purchaser to an extension unless the harvest of the NFS timber within the contract term will impede the removal of damaged non-NFS timber. In response to respondent concerns regarding § 223.53(d)(2)–(4), the Chief has already made an overall determination at § 223.53(a) that it is in the substantial, overriding public interest to grant urgent removal extensions where a need exists.

Comments on contract extension length. Seven respondents suggested that limiting extensions to a maximum of 1 year and allowing only one urgent removal extension may not be sufficient due to unforeseen events, such as additional catastrophic damage, poor operating conditions, and appeals and protests.

Response. The Department agrees that subsequent catastrophic events may justify additional urgent removal extensions. Other events, such as interruptions of operations due to appeals and litigation, may justify additional contract time under existing authorities and contract provisions. The Department believes that it is clear in § 223.53(b) that the 1-year limitation applies only to the events that led to the Regional Forester's determination. Section 223.53(d)(3) of the rule has been modified to make it clear that additional urgent removal extensions may be granted if there are subsequent Regional Forester determinations related to other catastrophic events.

Comments on required documentation. Six respondents stated that the requirement for purchasers to document that manufacturing facilities or logging equipment capacity available to a purchaser are insufficient to provide for both the rapid salvage of damaged non-NFS timber and continued harvest of undamaged (green) NFS timber under contract with the Forest Service (§ 223.53(c)(2)) is overly burdensome and redundant with the requirement for the Regional Forester to determine that there is an adequate cause for urgent removal extensions.

Response. The Department disagrees. The Regional Forester is required by § 223.53(b) to determine that a significant catastrophic event has occurred that may justify urgent removal extensions. Even though a catastrophic event has occurred and the Regional Forester has authorized urgent removal extensions, a purchaser is not entitled to an extension unless the harvest of the NFS timber within the contract term will impede the removal of damaged non-NFS timber. The Contracting Officer uses the purchaser's documentation to verify that a specific purchaser needs the urgent removal extension, based on the purchaser's particular operating requirements. The Department believes that the documentation required is within the purchaser's capacity to produce.

Comments on Regional Forester determination. One respondent was concerned that the requirement for a Regional Forester's determination may cause delays and other problems, if the catastrophic event and timber sale needing an extension are in different Regions. The respondents suggested that this authority should be delegated to Forest Supervisors.

Response. The authority to make determinations that adequate cause for urgent removal extensions exists is delegated to the Regional Forester to assure that there is consistency on a Regional basis. The FSH 2409.15 direction will require the Regional Forester to promptly document the need for urgent removal extensions after a significant catastrophic event. Contracting Officers will be directed to grant urgent removal extensions based on determinations made by any Regional Forester.

Comments on notarized statement requirement. Six respondents commented that the second part of the notarized statement in § 223.53(c)(3) of the interim rule forces purchasers to surrender contractual rights to compensation, if the contract is suspended or canceled. The respondents asserted that this is unjustified, adversarial, and punitive, and a serious disincentive to applying for urgent removal extensions. One additional respondent stated that, as a minimum, the statement should be clarified so that the limitation on damages applies only to the extension period and not to other factors, which are not related to the extension.

Response. The Department believes that the Government's liability for damages to the purchaser is limited during the extended contract length granted by an urgent removal extension. The overriding public benefits derived from the improved protection of public lands and public safety outweighs any potential risk to the Government for granting urgent removal extensions. Therefore, § 223.53(c)(3) of the interim rule setting out the requirements for a notarized statement has been removed from the final rule.

Comments on cash payment requirement. Seven respondents stated that requiring a cash payment, under § 223.53(e)(1) of the interim rule, is punitive and a disincentive to requesting an urgent removal extension. The respondents stated that the Chief's finding of substantial, overriding public interest is sufficient contract consideration for granting the additional contract term. One additional respondent suggested the alternative of a flat fee to compensate the Government for the cost of processing the extension, thus, the purchaser's decision on whether to request an extension would not be based on the current value of funds rate.

Response. The Department agrees that the overriding public benefits and the direct and indirect economic benefits from utilization of the damaged timber in the form of revenues received and employment created, and the avoided costs of wildfire suppression, reforestation, and watershed restoration work compensates the Government for granting the additional contract term. Therefore, § 223.53(e)(1) of the interim rule setting out the requirement for a cash payment have been removed from the final rule.

Comments on stumpage rate adjustment. Five respondents stated that freezing the floor of the tentative rates on sales subject to stumpage rate adjustment, as provided in § 223.53(e)(1)–(3), is punitive and a disincentive to requesting an urgent removal extension and conflicts with the Chief's finding of substantial, overriding public interest. One additional respondent stated that freezing the floor of the tentative rates on sales subject to stumpage rate adjustment should only apply during the extension period.

Response. The Department agrees that limiting downward adjustments of tentative rates conflicts with the substantial, overriding public interest identified by the Chief for granting urgent removal extensions. The cost to

the purchaser for an urgent removal extension should be similar to the cost when a purchaser is granted a contract term adjustment to log NFS salvage timber sale contracts. Therefore, § 223.53(e)(1)–(3) of the interim rule setting out this requirement have been removed from the final rule.

Finding of Substantial, Overriding Public Interest

Having considered (1) the potential plight of private and other non-NFS landowners whose timber may be damaged by wildfire and other catastrophes in future years; (2) the Forest Service statutory and regulatory framework for adjusting contracts; (3) the need for purchasers to plan their operations and to enter into contracts for the timely removal of damaged timber; (4) the need to improve protection of NFS lands from loss due to fire and/or insect and disease outbreaks on nearby non-NFS lands; (5) the need to reduce the threat to public safety and to property from catastrophic events; (6) the direct and indirect economic benefits from utilization of the damaged timber in the form of revenues received and employment created; (7) the avoided costs of wildfire suppression, reforestation, and watershed restoration work; and (8) the promotion of wise use and conservation of the natural resources of the Nation by utilizing rather than wasting damaged timber; the Chief of the Forest Service finds there is substantial, overriding public interest in extending certain NFS timber sale contracts for the harvest of undamaged (green) timber not requiring expeditious removal, when such an extension will expedite the rapid harvest of damaged timber requiring expeditious removal from private or other non-NFS lands. Extensions of undamaged (green) NFS timber sale contracts will be approved only if the delay of harvesting will not cause resource damage, delay the completion of needed projects, delay the harvest of damaged NFS timber, or in any other manner adversely impact the management of NFS lands. Highest priority consideration will be given to requests for extensions that involve damaged non-NFS timber adjacent to NFS lands.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. OMB has determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local Governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this rule will not have a significant economic impact on a substantial number of small entities. The final rule imposes minimal additional requirements on all timber purchasers for the purpose of validating the need for such extensions and to determine whether or not to approve the requested extension. The information required is easily within the capability of small entities to produce. All businesses that desire an urgent removal extension must show that the extension is needed in order to harvest and salvage deteriorating non-NFS timber, while avoiding significant economic hardship or contract default on NFS timber.

Environmental Impact

This final rule establishes uniform criteria to be followed when the Forest Service extends an NFS timber sale contract to facilitate the expeditious removal of damaged timber on non-NFS lands. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions'' that do not significantly affect the quality of the human environment. The Department's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which requires preparation of an environmental assessment or environmental impact statement. The intent of this final rule is to provide authority to allow additional time for completion of NFS timber sale contracts in the event the Forest Service authorizes purchasers to prioritize the harvesting of damaged timber from private or other non-NFS lands, thus avoiding unnecessary waste of valuable non-NFS resources due to deterioration. No change in environmental consequences to NFS lands would occur from implementation of this rule, only a temporary delay in operations.

Controlling Paperwork Burdens on the Public

The information required of a purchaser to request an extension of an NFS timber sale contract to facilitate expeditious removal of timber from non-NFS lands constitutes an information collection requirement, as defined in 5 CFR part 1320, and has been assigned Office of Management and Budget control number 0596–0167. This collection requires a purchaser to provide information to establish that an extension of a NFS timber sale contract(s) is needed to allow the harvest of damaged timber, located on private or other public lands, in need of expeditious removal because of catastrophic events beyond the control of the landowner.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal Governments and the private sector. This final rule does not compel the expenditure of $100 million or more by any State, local, or tribal Government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this final rule would allow for the extension of contract performance time on certain NFS timber sale contracts to facilitate the harvest of damaged timber from private or other non-NFS, allowing the expeditious removal of timber from lands in other ownerships damaged by catastrophic events beyond the landowner's control.

Federalism

The agency has considered this final rule under the requirements of Executive Order 13132, Federalism. The agency has made an assessment that the rule conforms with the Federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Consultation With Indian Tribal Governments

This final rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of private property. There are no private property rights to be affected, because the contract provisions that implement this rule will be used only with contract modifications that are made at the request of the timber sale purchaser.

Civil Justice Reform Act

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect would be given to this final rule; and (3) this final rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 223

Administrative practices and procedures, Exports, Government contracts, Forests and forest products, National forests, Reporting and recordkeeping requirements.

■ Therefore, for the reasons set forth in the preamble, the interim rule published at 67 FR 70165, November 21, 2002, is adopted as final with the following changes:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

■ 1. The authority citation for Part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618; 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

Subpart B—Timber Sale Contracts

■ 2. In § 223.53, revise paragraphs (b) through (e) to read as follows:

§ 223.53 Urgent removal contract extensions.

* * * * *

(b) *Regional Forester determination.* If the Regional Forester determines that adequate cause for urgent removal extensions exists, Contracting Officers may extend National Forest System timber sale contracts, up to a maximum of 1 year, for the estimated amount of time required to harvest and process the damaged timber on non-National Forest System lands. Contracting Officers may grant urgent removal extensions only when the Regional Forester verifies in writing that:

(1) A specific catastrophe occurred for which urgent removal extensions should be granted;

(2) The manufacturing facilities or logging equipment capacity available to purchasers are insufficient to provide for both the rapid harvest of damaged non-National Forest System timber in need of expeditious removal and the continued harvest of undamaged (green) timber under contract with the Forest Service; and

(3) Failure to harvest the damaged non-National Forest System timber promptly could result in the following:

(i) Pose a threat to public safety,

(ii) Create a threat of an insect or disease epidemic to National Forest System or other lands or resources, or

(iii) Significant private or other public resource loss.

(c) *Purchaser request.* To obtain an urgent removal extension on a National Forest System timber sale contract, a purchaser must make a written request to the Contracting Officer, which includes the following:

(1) An explanation of why the harvest of undamaged (green) National Forest System timber within the term of the existing National Forest System contract(s) will prevent or otherwise impede the removal of damaged non-National Forest System timber in need of expeditious removal; and

(2) Documentation that the manufacturing facilities or logging equipment capacity available to a purchaser would be insufficient to provide for both the rapid salvage of damaged non-National Forest System timber in need of expeditious removal and continued harvest of undamaged (green) National Forest System timber under contract with the Forest Service.

(d) *Contracting Officer determination.* To grant an urgent removal extension, the timber sale Contracting Officer must verify the following:

(1) That it is likely that the undamaged (green) timber from National Forest System land would be delivered to the same manufacturing facilities as are needed to process the damaged non-National Forest System timber or the National Forest System timber sale contract would require the use of the same logging equipment as is needed to remove the damaged non-National Forest System timber from the area affected by the catastrophe;

(2) That extension of the National Forest System contract will not be injurious to the United States and will protect, to the extent possible, the health of the National Forest System lands, including:

(i) That urgent removal extension does not adversely affect other resource management objectives to be implemented by the National Forest System timber sale being extended; and

(ii) That the National Forest System timber sale contract to be extended is not a sale containing damaged, dead, or dying timber subject to rapid deterioration.

(3) That the purchaser has not been granted a previous urgent removal extension on the same National Forest System timber sale contract based on the current catastrophic event. Subsequent urgent removal extensions may be granted if there are subsequent Regional Forester determinations on other catastrophic events.

(4) That the revised National Forest System timber sale contract term will not exceed 10 years from the date the National Forest System contract was awarded; and

(5) That the purchaser is not in breach of the National Forest System contract, and all work items, payments, and deposits are current.

(e) *Execution of contract extension.* An urgent removal extension of a National Forest System timber sale contract is executed through a mutual agreement contract modification pursuant to § 223.112, which must include specific contract provisions. An agreement to modify a contract must identify the specific provision(s) of the contract being modified and must include the requirement that purchasers make cash payment to cover the costs of remarking timber on the sale area or reestablishing cutting unit boundaries if the Contracting Officer determines such work is necessary.

* * * * *

Dated: December 23, 2003.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 03–32243 Filed 12–31–03; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 259–0425; FRL–7598–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified, Ventura County, Santa Barbara County, and Monterey Bay Unified Air Pollution Control Districts and Yolo Solano, Bay Area, and Mojave Desert Air Quality Management Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified (SJVUAPCD), Ventura County (VCAPCD), Santa Barbara County (SBCAPCD), and Monterey Bay Unified (MBUAPCD) Air Pollution Control Districts and to the Yolo Solano (YSAQMD), Bay Area (BAAQMD), and Mojave Desert (MDAQMD) Air Quality Management Districts' portions of the California State Implementation Plan (SIP). These actions were proposed in the **Federal Register** on September 20, 2002 and August 8, 2003 and concern volatile organic compound (VOC) emissions from architectural coatings. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action approves local rules that regulate these emission sources.

EFFECTIVE DATE: This rule is effective on February 2, 2004.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted SIP revisions by appointment at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Yolo Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392.

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

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov.*

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

I. Proposed Action

On September 20, 2002 (67 FR 59229) and August 8, 2003 (68 FR 47279), EPA proposed limited approvals and limited disapprovals of the following rules that were submitted for incorporation into the California SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4601	Architectural Coatings	10/31/01	03/15/02
VCAPCD	74.2	Architectural Coatings	11/13/01	03/15/02
SBCAPCD	323	Architectural Coatings	11/15/01	03/15/02
MBUAPCD	426	Architectural Coatings	04/17/02	06/18/02
YSAQMD	2.14	Architectural Coatings	11/14/01	01/22/02
BAAQMD	8–3	Architectural Coatings	11/21/01	06/18/02
MDAQMD	1113	Architectural Coatings	02/24/03	04/01/03

We proposed limited approvals because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed limited disapprovals because some rule provisions conflict with section 110 and part D of the Act. These rules were all based on the same model—the California Air Resources Board's (CARB) Suggested Control Measure for Architectural Coatings (SCM)—and as a result, they contain many of the same rule deficiencies. These deficiencies relate to the averaging provisions incorporated into the rules. The deficient provisions common to all seven rules listed in Table 1 include the following:

1. High-VOC coatings sold under the general sell-through provision cannot necessarily be distinguished from coatings sold under an averaging program based on the information explicitly required to be maintained under the rules. This compromises the enforceability of the rules as manufacturers may claim that emissions from coatings sold under the sell-through provision should be excluded from averaged emissions.

2. The requirement that manufacturers describe the records being used to calculate coating sales under averaging programs is not sufficiently specific and represents executive officer discretion.

3. The rules' language regarding how violations of the averaging compliance option shall be determined is ambiguous.

4. The rules grant the Executive Officer of CARB authority to approve or disapprove initial averaging programs, program renewals, program modifications, and program terminations, raising jurisdictional issues and creating enforceability problems since CARB has not been granted authority by the state Legislature under the California Health and Safety Code to regulate architectural coatings.

5. The rules allow manufacturers to average coatings based on statewide or district-specific data which makes enforceability more difficult and conflicts with other rule provisions which imply that averaging will only be

implemented by CARB and conducted on a statewide basis.

Deficiency #5 was identified in our 2003 proposal (68 FR 47279) but not specifically noted in our 2002 proposal (67 FR 59229). This deficiency, however, was described in each of the Technical Support Documents (TSDs) for the three rules that were the subject of our 2002 proposal (67 FR 59229) and was a basis for our limited disapproval of each of the first three rules listed in Table 1. Because the language contained in all seven of these rules is similar and they are all components of a larger statewide program, we are now clarifying that this last deficiency is a basis for our limited disapproval of all seven rules listed in Table 1. Our proposed actions contain more information on the basis for this rulemaking and on our evaluation of the submittals.

The deficiencies identified in our 2002 proposal (67 FR 59229) of the first three rules listed in Table 1 also differed slightly from the deficiencies identified in our 2003 proposal (68 FR 47279) for the last four rules listed in Table 1. Other deficient provisions identified in our 2002 proposal (67 FR 59229) but not in our 2003 proposal (68 FR 47279) included the following:

1. The rules allow the VOC content displayed on a coating to be calculated using product formulation data but lack a clear and enforceable definition for the term formulation data.

2. The rules contain typographical errors that make the rules confusing to regulated sources and less enforceable.

Based on information received during and after the comment period of our 2002 proposal, we no longer consider these to be deficiencies in these rules. See Comments and Responses #2 and #8.

II. Public Comments and EPA Responses

EPA's proposed actions provided 30-day public comment periods. During the comment period for the 2002 proposal (67 FR 59229), we received comments from the following parties.

1. Howard Berman, Environmental Mediation, Inc. (EM) representing Dunn-Edwards (DE), a California based manufacturer and retailer of coatings; letter dated October 17, 2002.

2. Madelyn K. Harding, Sherwin Williams (SW), a worldwide manufacturer of coatings; letter dated October 17, 2002.

3. Mike Villegas, VCAPCD; letter dated October 17, 2002.

4. Scott Nester, SJVUAPCD; letter dated October 17, 2002.

5. Ellen Garvey, Bay Area Air Quality Management District (BAAQMD); letter dated October 18, 2002.

6. Michael P. Kenny, CARB; letter dated October 21, 2002.

We did not receive any comments during the comment period for the 2003 proposal (68 FR 47279) although we made clear that comments submitted on our 2002 proposal would be considered to apply to our 2003 proposal where appropriate. The comments and our responses are summarized below.

Comment #1: EM comments that their client, DE, disagrees, as does CARB, with our conclusion that these rules are subject to EPA's Economic Incentive Program Guidance (EIP Guidance). DE and CARB filed extensive comments as to why these rules do not fall within the scope of the EIP Guidance. CARB comments further that the EIP Guidance is a non-binding guidance document.

Response #1: An EIP is any program which may include State established measures directed toward stationary, area, and/or mobile sources, to achieve emissions reductions milestones, to attain and maintain ambient air quality standards, and/or to provide more flexible, lower-cost approaches to meeting environmental goals (EIP Guidance, page 158). These rules (1) regulate architectural coatings, an area source, (2) were submitted to EPA in order to meet the National Ambient Air Quality Standards (NAAQS), and (3) allow manufacturers to reduce emissions from their products to comply with the requirements of the rules in a more flexible and lower-cost manner. Furthermore, these rules fall under the category of emission averaging EIPs because they enable a source, in this case a particular coating, emitting above its allowable emission rate limit to comply with that rate limit by averaging its emissions with a second source, a different coating, emitting below that second source's regulatory rate limit (EIP Guidance, page 91). Clearly, these rules meet the definition of an EIP and it is, therefore, appropriate to apply the EIP Guidance. Any comments submitted by DE and CARB on the EIP Guidance were considered by us before finalization of the guidance and do not need to be reconsidered in the current context. The EIP Guidance is EPA's most recent guidance for economic incentive programs. It is being used to help ensure consistent interpretation of the CAA where its application to detailed EIP requirements is unclear.

Comment #2: EM and BAAQMD state that formulation data is a reliable means for calculating a product's VOC content because manufacturers know how their products are formulated and that everyone understands what is required to calculate VOC content. SW and CARB state that defining the term formulation data is unnecessary because the EPA's National Volatile Organic Compound Emission Standards for Architectural Coatings (40 CFR part 59 subpart D, the National Rule) also allows formulation data to be used without including a separate definition for the term. SW adds and VCAPCD, SJVUAPCD, BAAQMD and CARB also comment that the VOC content is ultimately determined by testing with Method 24 of appendix A of 40 CFR part 60. If EPA requires a definition of formulation data, DE would want EPA to state that formulation data is preferred over Method 24 because of the inherent unreliability and wide margin of error associated with Method 24.

Response #2: While manufacturers may know exactly what goes into their products, they often report paint formulation data by indicating a range for each component within a product. These ranges may often be quite wide, making the particular VOC content of a product difficult to determine. The National Rule does not, in fact, have a separate definition for formulation data. As with all analytical methods, there is some uncertainty associated with Method 24; however, it is a reliable method that has gone through extensive quality assurance and round robin testing to ensure that it is replicable and reliable for determining VOC content. Because the National Rule and these rules ultimately rely on Method 24 to validate the VOC content of coatings for compliance purposes, we concur that a separate definition for the term formulation data is not necessary. As a result, we are not finalizing our concern regarding formulation data as a deficiency. We encourage DE to submit an alternative test method to EPA for consideration if they deem another method to be more reliable than Method 24.

Comment #3: EM, SW, VCAPCD, BAAQMD and CARB comment that the sell through of averaged coatings is not problematic. SJVUAPCD, BAAQMD and CARB state that labeling on coatings indicating the date of manufacture and the coating's participation in an averaging program is sufficient to determine compliance. SW and CARB state that averaging plans calculate emissions based on shipments into the state and that all emissions are counted at the start of an averaging program even though the coating may not yet have been sold. EM claims that the standard sell through provision of all coatings is more problematic.

Response #3: EPA is primarily concerned with the sell through of averaged coatings because it may make certain compliance determinations difficult or impossible. In order to determine compliance for an averaged coating, an inspector would have to be able to associate the emissions from that particular can of coating with a particular compliance year. While a can of coating may have been manufactured within a certain compliance period, a manufacturer may not necessarily include it among the averaged emissions for that year. It is therefore important that each can of coating in an averaging plan be specifically attributable to a particular compliance year. The date code and other labeling on a coating does not provide this information. EPA notes, contrary to SW and CARB's claims, that several of these rules were not written such that the volume of coating used as the basis for emissions calculations is, in fact, the volume of coating sold [see sections A1 of the CARB's Suggested Control Measure (SCM) and all rules, section A.3.3 of SCM, section 8.4.3 of SJVUAPCD Rule 4601, section AA.3.6 of VCAPCD Rule 74.2, section A.3.3 of SBCAPCD Rule 323, and section A.3.3 of MBUAPCD Rule 426]. If at the end of a compliance period, a manufacturer finds that they have exceeded the allowable emissions, they may argue that some emissions from a coating that did not sell in the current compliance year should be advanced into the next compliance year because of sell through. Alternatively, if a manufacturer determined that more high-VOC products were sold than projected in their averaging plan, they could argue that they were sold under the sell-through provision.

Comment #4: EM comments that the jurisdictional issue created by CARB approving, disapproving, renewing, modifying or terminating averaging programs could be seen as an extension of their advisory role to local air pollution control districts. VCAPCD, BAAQMD, and CARB comment that CARB is merely providing administrative functions. CARB notes that they are assuming some administrative functions at the request of the California Air Pollution Control Officers Association (CAPCOA). SJVUAPCD and CARB state CARB's involvement simplifies the implementation of averaging programs and that CARB's purely administrative role is clarified in a draft Memorandum of Understanding (MOU) between the districts and CARB. SJVUAPCD, BAAQMD, and CARB also note that the districts retain ultimate enforcement authority.

Response #4: As currently written, these rules give CARB many decision making powers that have not been delegated to it. A draft MOU clarifying the responsibilities of the districts and CARB is unenforceable. If districts and CARB do not fulfill an enumerated responsibility described in the MOU, no agency, including EPA could take action to require the districts or CARB to perform that duty. Furthermore, while districts and CAPCOA may wish and agree to release these powers to the CARB, we have received no legal assurances that the CARB may assume these powers without an act of the State Legislature. EPA's recommendation to the districts to resolve this deficiency was to scale CARB's involvement to a more advisory role by structuring the program so that CARB would be responsible for making recommendations which each district would then formally adopt or reject. In this way, the districts, not CARB, maintain their authority as the decision making and regulatory body. Alternatively, we would consider a certification by the State Attorney General that CARB has these authorities. Furthermore, the district's ability to enforce an averaging program could be hampered if it was not the entity that originally approved the program.

Comment #5: EM believes that the problem of not specifying exactly what records are being used to calculate emissions is resolved if manufacturers commit before implementing their averaging programs to use only one form of distribution as the basis for calculating emissions under an averaging program.

Response #5: According to various provisions of these rules, averaging is a provision that operates on a statewide basis by a statewide agency, CARB. It is therefore most consistent to require that emissions calculations also rely on statewide data. Allowing manufacturers to choose to use either district-specific or statewide data gives them the ability to manipulate emissions calculations by choosing the data type that shows fewer emissions. We note, additionally, that the existing rules do not require manufacturers to select one form of distribution as the basis for calculating emissions.

Comment #6: EM, VCAPCD, SJVUAPCD, BAAQMD, and CARB comment that under an averaging program, an exceedance occurs when the entire program shows on the whole that the actual emissions exceed the allowable emissions. The excess emissions cannot be attributable to any one product in the program.

Response #6: It is precisely because excess emissions cannot be attributed to any one product that it must be assumed that all products under an averaging program that were sold with a VOC content greater than the effective VOC limit contributed to the exceedance. For example, if an averaging program balances the emissions from three coatings that exceed the limits of the rule against the emissions of two super-compliant coatings, then all three non-compliant coatings were partially responsible for the exceedance and a violation for each of these coatings should be assessed for each day of the compliance period.

Comment #7: SW comments that EPA's proposed language for clarifying how violations of averaging provisions are determined would result in penalties that are too large and not in balance with the damage done to the environment. CARB comments that the magnitude of potential penalties under the current rule language is a sufficient disincentive for willful violations. BAAQMD states that any difficulties with enforcement and assessment of penalties can be corrected during the following compliance period.

Response #7: EPA's proposed language would clarify that violations could be assessed for any coating that was sold above the limits of the rule. The benefits of allowing manufacturers to continue to sell coatings that do not meet the limits of the rule under an averaging program must be balanced by significant deterrents against non-compliance. These rules currently limit the violations that can be assessed to only one per day. By clarifying the language in the rule, agencies may assess larger penalties, however, they are also in no way precluded from using their enforcement discretion to weigh the significance of the overall environmental damage to assess a penalty that is appropriate based on the overall circumstances of the violation.

Comment #8: VCAPCD, SJVUAPCD, BAAQMD and CARB comment that the typographical errors in the rules should not be considered a deficiency, but a rule improvement issue, since the correct language can be determined.

Response #8: We concur that the correct language can ultimately be surmised despite the typographical errors. As a result, we are not finalizing this issue as a deficiency.

Comment #9: VCAPCD, BAAQMD, and CARB comment that all deficiencies associated with averaging become moot after 2005 when the averaging provisions of these rules sunset. CARB

asserts that there are ultimately no SIP implications from these temporary programs.

Response #9: EPA is required to ensure that SIP regulations fully comply with enforceability and other requirements of CAA section 110 and part D. Because of the near-term sunset date of the averaging provisions, however, we concur that it will not be necessary to impose sanctions because the deficient rule provisions will vacate before the sanction clocks would expire. For further discussion see our 2003 proposal (68 FR 47279).

Comment #10: VCAPCD and CARB state that EPA should not examine the averaging programs based on the possibility that the averaging programs would be extended and notes that an extension of the averaging programs would require a revision to the rules through action by their respective Boards.

Response #10: The evaluation of these rules was not based on the possibility of the extension of the averaging provisions. All evaluation of these rules was based on the programs as they exist under current rule language. EPA noted in our TSDs for these rules one additional recommendation to evaluate these programs after three years if the averaging programs were to be extended beyond 2005. We clearly stated that this was a recommendation to improve the rule and that it was not an issue affecting our current action.

Comment #11: In response to Deficiency #5, VCAPCD and CARB comment that district-specific data is equally enforceable as statewide data. CARB believes that district-specific data should be allowed so that smaller regional manufacturers may utilize the averaging provisions of these rules.

Response #11: Submitting statewide data does not prevent smaller regional manufacturers from averaging their coatings. If these manufacturers do not have sales in particular areas of the state then the sales in those areas would be assumed to be zero and statewide data could be generated. In part, we are concerned that the existing language would allow manufacturers to game the system and moderate overall emission calculations by using district-specific or statewide data, depending on whichever produced more favorable results. Also see Response #5.

Comment #12: VCAPCD and CARB comment that the language that describes which records may be used to calculate emissions is sufficient for determining compliance when coupled with the Statewide Averaging Guidance Document and active cooperation with individual manufacturers. BAAQMD states that this language is meant to recognize the unique nature of a specific manufacturers' program and does not constitute executive officer discretion because the stringency of the rule cannot be affected by an administrative decision. SJVUAPCD comments that many rule provisions allow inspectors to verify the accuracy of records for determining compliance. CARB notes that a definition for enforceable sales record proposed by EPA is essentially what is being followed when approving acceptable records and cites this as an example of where EPA should have raised this concern earlier during the development of South Coast Air Quality Management Districts' (SCAQMD) Rule 1113.

Response #12: These rules do not specify what records may be submitted as an enforceable record. Any record, including those that may be unverifiable, may be submitted to substantiate emission calculations and it is the purview of the Executive Officer to approve any of these records as acceptable. This unlimited executive officer discretion is unenforceable. There is currently no provision under these rules to verify the accuracy of a particular record before an averaging program is approved. While the Statewide Averaging Guidance Document may further delineate and limit the records that may be submitted, the Statewide Averaging Guidance Document is not an enforceable element of the SIP and could not be relied upon for enforcement purposes. EPA raised this concern regarding enforceable records to SCAQMD during the development of Rule 1113 in a May 13, 1999 letter and notes that this provision was not proposed as an amendment to Rule 1113 until the March 31, 1999 Working Group meeting. This same concern was raised to the CARB in a June 21, 2000 letter after it proposed a similar provision in a draft of the SCM emailed on June 14, 2000 for consideration. Although not relevant to this rulemaking, our review of these provisions as they were developed was timely and responsive.

Comment #13: SJVUAPCD, BAAQMD, and CARB comment that the emissions reductions associated with these rules are valuable. CARB comments that these rules are significantly more stringent that the National Rule. SJVUAPCD asserts that approval of these rules would encourage other districts to adopt similar rules which could achieve up to 10 tons of emission reductions per day across California. CARB claims that EPA's proposed limited disapproval of these rules is discouraging districts from submitting their architectural coating rules as SIP revisions. BAAQMD indicates that the development of the SCM and these rules were the result of over two years of work and that the difficulties historically encountered in adopting architectural coatings rules should be balanced against the marginal benefits of EPA's suggested rule changes.

Response #13: EPA does not dispute that these rules reduce VOC emissions by putting more restrictive VOC content limits into effect for architectural coatings and we recognize the significant efforts of the CARB and districts to develop the SCM and these rules modeled on it. At the same time, EPA's role is to ensure that all rules approved into the SIP meet the statutory requirements of the CAA. Because these programs provide the regulated industry considerable compliance flexibility, this must be balanced by enforcement certainty and adequate penalties for non-compliance. It is not EPA's intention to discourage the submittal of similar rules, and note that no sanctions will be imposed due to our action on these rules. Also see Response #9.

Comment #14: BAAQMD comments that EPA should have submitted comments to CARB and districts at the time of SCM adoption or shortly thereafter. CARB comments that the averaging provisions in these rules were based on SCAQMD Rule 1113 and that timely action by EPA on SCAQMD's February 18, 2000 submittal of Rule 1113 would have allowed the districts to consider EPA's concerns when they were adopting their rules.

Response #14: EPA did participate in the regulatory development process for the SCM and SCAQMD's Rule 1113. We note that the bulk of the deficiencies that we have identified in these rules relate to the averaging program which was added to the SCM one week before the SCM was adopted by the CARB. After only limited review, EPA did express concerns regarding the program to the CARB before adoption of the SCM. We were informed that our issues would be addressed through various means such as the Statewide Averaging Guidance Document and the MOU. The discussions with CARB and districts during the development of these documents has, instead, brought even more issues to light. EPA notes that our comments during rule development are not final and that our ultimate evaluation and approval or disapproval of rules only occurs after formal submittal. EPA did receive submittals of SCAQMD's Rule 1113 on February 18, 2000 and on December 14, 2001. The CAA prevents EPA from acting on the 2000 submittal of Rule 1113. EPA is

only allowed to act on the more recent 2001 submittal since this is the district's most current regulation for this source category. EPA was in the process of acting on the SCAQMD's 2001 submittal when that version was recently vacated by the Court. *National Paint and Coatings Association, Inc.* v. *SCAQMD,* (June 24, 2002, G029462). Also see Response #12.

Comment #15: CARB notes that confirmation of the volume of high VOC products sold is additional information that is not typically required for determining compliance with architectural coatings rules but that it is similar to the additional record verification that is necessary to determine compliance with the National Rule's exceedance fee and tonnage exemption options.

Response #15: Determining a manufacturer's compliance with an averaging program requires knowing the total volume sold to verify that the actual emissions do not exceed the allowable emissions. This cannot be accomplished and compliance cannot be determined if reliable and specific sales records are not required and available. Also see Responses #3 and #13.

Comment #16: CARB comments that EPA's proposed language to rectify Deficiency #2 by clarifying that records must be made available to the Executive Officer upon request is equivalent to the current rule language. CARB contends that requirements on manufacturers to describe the records being used to calculate coating sales under averaging programs are sufficiently specific and do not represent executive officer discretion.

Response #16: The current language in these rules is not equivalent to EPA's proposed language. While the current language requires that records be maintained, there is currently no language requiring that these records be surrendered to the Executive Officer.

Comment #17: CARB states that the public release of sales data is not necessary to demonstrate compliance. While CARB believes that all emissions data should be made publicly available, they argue that sales data which does not constitute ''emissions data'' is confidential and not necessary for determining compliance.

Response #17: EPA's proposed limited disapproval actions did not specifically identify California's treatment of information claimed confidential as a deficiency. Rather, Deficiency #2 focuses on the fact that the California rules do not specify which records must be maintained to quantify sales. It may well be, as CARB believes, that the rules can be revised to provide adequate certainty about record maintenance without changing California's treatment of certain records as confidential material. Also see Response #15.

III. EPA Action

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. Several submitted comments did change our assessment of the rules as originally described in our proposed actions. Therefore, as authorized under section 110(k)(3), we are only finalizing the five deficiencies identified in our 2003 proposal (68 FR 47279), and these five deficiencies apply to all seven rules. Sanctions will not be imposed under section 179 of the Act according to 40 CFR 52.31, even if EPA does not approve subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action because, according to specific language incorporated into the rules, the deficient provisions will expire in January 2005, in advance of the end of the 18-month period allowed to correct the deficiencies. Similarly, EPA also will not promulgate a federal implementation plan (FIP) under section 110(c) if subsequent SIP revisions that correct the rule deficiencies are not approved within 24 months. Note that the submitted rules have been adopted by the local agencies, and EPA's final limited disapproval does not prevent the local agencies from enforcing their rules.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

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.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental

Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective February 2, 2004.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 2, 2004. 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: November 17, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(293)(i)(B), (c)(297)(i)(A)(*5*), (c)(297)(i)(E), (c)(297)(i)(F), (c)(300)(i)(B), (c)(300)(i)(C), and (c)(315)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(293) * * *

(i) * * *

(B) Yolo-Solano Air Quality Management District.

(*1*) Rule 2.14, adopted on November 14, 2001.

* * * * *

(297) * * *

(i) * * *

(A) * * *

(*5*) Rule 74.2, adopted on November 13, 2001.

* * * * *

(E) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4601, adopted on October 31, 2001.

(F) Santa Barbara County Air Pollution Control District.

(*1*) Rule 323, adopted on November 15, 2001.

* * * * *

(300) * * *

(i) * * *

(B) Bay Area Air Quality Management District.

(*1*) Rule 8–3, adopted on November 21, 2001.

(C) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 426, adopted on April 17, 2002.

* * * * *

(315) * * *

(i) * * *

(C) Mojave Desert Air Quality Management District.

(*1*) Rule 1113, adopted on February 24, 2003.

* * * * *

[FR Doc. 03–32212 Filed 12–31–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7823]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable

standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New York: Dover, Town of, Dutchess County.	361335	Mar. 22, 1976, Emerg.; Aug. 15, 1984, Reg.; Jan. 2, 2004, Susp.	Jan. 2, 2004	Jan. 2, 2004.
Region I				
Massachusetts: Chelmsford, Town of, Middlesex County.	250188	Dec. 6, 1973, Emerg.; June 4, 1980, Reg.; Jan. 16, 2004, Susp.	Jan. 16, 2004 ...	Jan. 16, 2004.
Region IV				
North Carolina:				
Columbia, Town of, Tyrrell County	370233	June 27, 1975, Emerg.; Aug. 5, 1985, Reg.; Jan. 16, 2004, Susp.	.....do*	Do.
Franklin County, Unincorporated Areas	370377	Feb. 21, 1997, Emerg.; May 1, 2000, Reg.; Jan. 16, 2004, Susp.	.....do	Do.
Franklinton, Town of, Franklin County ..	370497	July 30, 1997, Emerg.; Jan. 19, 2001, Reg.; Jan. 16, 2004, Susp.	.....do	Do.
Louisburg, Town of, Franklin County	370098	June 17, 1975, Emerg.; Mar. 4, 1988, Reg.; Jan. 16, 2004, Susp.	.....do	Do.
Youngsville, Town of, Franklin County ..	370494	June 30, 1997, Emerg.; Jan. 19, 2001, Reg.; Jan. 16, 2004, Susp.	.....do	Do.
Region VII				
Nebraska:				
Axtell, Village of, Kearney County	310344	Feb. 24, 1994, Reg.; Jan. 16, 2004, Susp ..	.....do	Do.
Kearney County, Unincorporated Areas	310448	July 30, 1999, Emerg.; Jan. 16, 2004, Reg.; Jan. 16, 2004, Susp.	.....do	Do.
Minden, City of, Kearney County	310389	Oct. 7, 1975, Emerg.; Sept. 24, 1984, Reg.; Jan. 16, 2004, Susp.	.....do	Do.

*do, Do=Ditto
Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–32311 Filed 12–31–03; 8:45 am]

BILLING CODE 6718–05–P

Proposed Rules

Federal Register
Vol. 69, No. 1
Friday, January 2, 2004

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–126459–03]

RIN 1545–BC18

Changes in Computing Depreciation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register,** the IRS is issuing temporary regulations under sections 446(e) and 1016(a)(2) of the Internal Revenue Code relating to a change in computing depreciation or amortization as well as a change from a nondepreciable or nonamortizable asset to a depreciable or amortizable asset (or vice versa). The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by April 1, 2004. Outlines of topics to be discussed at the public hearing scheduled for April 7, 2004, at 10 a.m. must be received by March 17, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–126459–03), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–126459–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sara Logan or Douglas Kim, (202) 622–3110; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, (202) 622–4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to sections 167, 446, and 1016 of the Internal Revenue Code (Code). The temporary regulations provide guidance under section 446(e) on whether a change in computing depreciation or amortization as well as a change from a nondepreciable or nonamortizable asset to a depreciable or amortizable asset (or vice versa) is a change in method of accounting that requires the consent of the Commissioner.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 7, 2004, beginning at 10 a.m. in the Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 17, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Sara Logan, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 reads as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.167(e)–1 is amended by revising paragraphs (a) and (e) to read as follows:

§ 1.167(e)–1 Change in method.

(a) [The text of the proposed amendment to § 1.167(e)–1(a) is the same as the text of § 1.167(e)–1T(a) published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) *Effective date.* This section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see § 1.167(e)–1 in effect prior to December 30, 2003 (§ 1.167(e)–1 as contained in 26 CFR part 1 edition revised as of April 1, 2003).

Par. 3. Section 1.446–1 is amended by revising paragraphs (e)(2)(ii)(*a*), (e)(2)(ii)(*b*), (e)(2)(ii)(*d*), (e)(2)(iii), and (e)(4) to read as follows:

§ 1.446–1 General rule for methods of accounting.

* * * * *

(e) * * *

(2) * * *

(ii)(*a*) and (*b*) [The text of the proposed amendment to § 1.446–1(e)(2)(ii)(*a*) and (*b*) is the same as the text of § 1.446–1T(e)(2)(ii)(*a*) and (*b*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(*d*) [The text of this paragraph (e)(2)(ii)(*d*) is the same as the text of § 1.446–1T(e)(2)(ii)(*d*) published elsewhere in this issue of the **Federal Register**].

(iii) [The text of the proposed amendment to § 1.446–1(e)(2)(iii) is the same as the text of § 1.446–1T(e)(2)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) *Effective date*—(i) *In general.* Except as provided in paragraphs (e)(3)(iii) and (e)(4)(ii) of this section, paragraph (e) of this section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see § 1.446–1(e) in effect prior to December 30, 2003 (§ 1.446–1(e) as contained in 26 CFR part 1 edition revised as of April 1, 2003).

(ii) *Changes involving depreciable or amortizable assets.* With respect to paragraph (e)(2)(ii)(*d*) of this section, paragraph (e)(2)(iii) *Examples 9* through *17* of this section, the addition of the language ''certain changes in computing depreciation or amortization (see paragraph (e)(2)(ii)(*d*) of this section)'' to the last sentence of paragraph (e)(2)(ii)(*a*) of this section, and the removal of all language regarding useful life and the sentence ''On the other hand, a correction to require depreciation in lieu of a deduction for the cost of a class of depreciable assets which had been consistently treated as an expense in the year of purchase involves the question of the proper timing of an item, and is to be treated as a change in method of accounting'' from paragraph (e)(2)(ii)(*b*) of this section—

(A) For any change in depreciation or amortization that is a change in method of accounting, this section applies to such a change in method of accounting made for taxable years ending on or after December 30, 2003; and

(B) For any change in depreciation or amortization that is not a change in method of accounting, this section applies to such a change made for taxable years ending on or after December 30, 2003.

Par. 4. Section 1.1016–3 is amended by revising paragraphs (h) and (j) to read as follows:

§ 1.1016–3 Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 28, 1913.

* * * * *

(h) [The text of the proposed amendment to § 1.1016–3(h) is the same as the text of § 1.1016–3T(h) published elsewhere in this issue of the **Federal Register**].

* * * * *

(j) *Effective date*—(1) *In general.* Except as provided in paragraph (j)(2) of this section, this section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see § 1.1016–3 in effect prior to December 30, 2003 (§ 1.1016–3 as contained in 26 CFR part 1 edition revised as of April 1, 2003).

(2) *Depreciation or amortization changes.* Paragraph (h) of this section applies to a change in depreciation or amortization for property subject to section 167, 168, 197, 1400I, 1400L(b), or 1400L(c), or former section 168 for taxable years ending on or after December 30, 2003.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–31821 Filed 12–30–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–153656–03]

RIN 1545–BC70

Credit for Increasing Research Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document invites comments from the public regarding certain rules and standards relating to internal-use software under section 41(d)(4)(E) of the Internal Revenue Code. All materials submitted will be available for public inspection and copying. This document also addresses the effective date for final rules relating to internal-use software.

DATES: Comments are requested on or before March 2, 2004.

ADDRESSES: Send written comments to: Internal Revenue Service, Attn: CC:PA:LPD:PR [REG–153656–03], room 5203, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, taxpayers may submit comments in writing, by hand delivery to CC:PA:LPD:PR [REG–153656–03], Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC, or electronically, via the IRS Internet site at: *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Nicole R. Cimino at (202) 622–3120 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

On December 31, 2003, the Treasury Department and the IRS issued final regulations (TD 9104) for the credit for increasing research activities under section 41 (research credit). TD 9104 provides rules relating to the definition of *qualified research* under section 41(d) but does not finalize rules relating to internal-use software under section 41(d)(4)(E). This advance notice of proposed rulemaking (ANPRM) invites comments from the public regarding the proposed regulations issued in 2001 relating to internal-use software under section 41(d)(4)(E). Although the Treasury Department and the IRS welcome comments on all aspects of those proposed regulations, the Treasury Department and the IRS specifically request comments concerning the definition of internal-use

software. In addition, the Treasury Department and the IRS request comments on whether final rules relating to internal-use software should have retroactive effect.

Background

Section 41(d)(4)(E) provides that, except to the extent provided by regulations, research with respect to computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer (internal-use software) is excluded from the definition of qualified research under section 41(d). (Software that is developed for use in an activity which constitutes qualified research and software that is developed for use in a production process with respect to which the general credit eligibility requirements are satisfied are not excluded as internal-use software under the provisions of section 41(d)(4)(E).) The statutory exclusion for internal-use software and the regulatory exceptions to this exclusion have been the subject of a series of proposed and final regulations.

Legislative History

The legislative history to the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085) (1986 Act), states that ''the costs of developing software are not eligible for the credit where the software is used internally, for example, in general and administrative functions (such as payroll, bookkeeping, or personnel management) or in providing noncomputer services (such as accounting, consulting, or banking services) except to the extent permitted by Treasury regulations.'' See H.R. Conf. Rep. No. 841, at II–73 (1986 legislative history). The 1986 legislative history further states that Congress intended that regulations would make the costs of new or improved internal-use software eligible for the credit only if the research satisfies, in addition to the general requirements for credit eligibility, an additional, three-part high threshold of innovation test (*i.e.*, that the software was innovative, that the software development involved significant economic risk, and that the software was not commercially available for use by the taxpayer).

Congress has extended the research credit a number of times since the 1986 Act but has not made any changes to the statutory definition of qualified research or to the statutory exclusion for internal-use software in section 41(d)(4)(E). When Congress extended the research credit in the Tax Relief Extension Act of 1999, Public Law 106–170 (113 Stat. 1860) (1999 Act), however, the legislative history stated the following with respect to internal-use software:

> The conferees further note the rapid pace of technological advance, especially in service-related industries, and urge the Secretary to consider carefully the comments he has and may receive in promulgating regulations in connection with what constitutes ''internal use'' with regard to software expenditures. The conferees also wish to observe that software research, that otherwise satisfies the requirements of section 41, which is undertaken to support the provision of a service, should not be deemed ''internal use'' solely because the business component involves the provision of a service.

H.R. Conf. Rep. No. 106–478, at 132 (1999).

1997 Proposed Regulations

On January 2, 1997, the Treasury Department and the IRS published proposed regulations (REG–209494–90, 1997–1 C.B. 723) in the **Federal Register** (62 FR 81) under section 41 relating to internal-use software (1997 proposed regulations). In relevant part, the 1997 proposed regulations stated:

> Research with respect to computer software that is developed by (or for the benefit of) the taxpayer primarily for the taxpayer's internal use is eligible for the research credit only if the software satisfies the requirements of paragraph (e)(2) of this section. Generally, research with respect to computer software is not eligible for the research credit where software is used internally, for example, in general and administrative functions (such as payroll, bookkeeping, or personnel management) or in providing noncomputer services (such as accounting, consulting, or banking services).

Prop. § 1.41–4(e)(1) (1997).

The 1997 proposed regulations contained an exception to the internal-use software rules for certain software developed by the taxpayer as a part of a new or improved package of computer software and hardware developed together as a single product. Such software would not be subject to the high threshold of innovation requirements for internal-use software under the 1997 proposed regulations. The 1997 proposed regulations, however, did not contain a specific definition of internal-use software. Instead, the 1997 proposed regulations provided that the determination of whether software was internal-use software would depend on the facts and circumstances of each case:

> All relevant facts and circumstances are to be considered in determining if computer software is developed primarily for the taxpayer's internal use. If computer software is developed primarily for the taxpayer's internal use, the requirements of this paragraph (e) apply even though the taxpayer intends to, or subsequently does, sell, lease, or license the computer software.

Prop. § 1.41–4(e)(4) (1997).

2001 Final Regulations (TD 8930)

On January 3, 2001, the Treasury Department and the IRS published in the **Federal Register** (66 FR 280) final regulations (TD 8930) relating, in relevant part, to the definition of internal-use software for purposes of section 41(d)(4)(E). With respect to the general definition of internal-use software, TD 8930 provided:

> Software is developed primarily for the taxpayer's internal use if the software is to be used internally, for example, in general administrative functions of the taxpayer (such as payroll, bookkeeping, or personnel management) or in providing noncomputer services (such as accounting, consulting, or banking services). If computer software is developed primarily for the taxpayer's internal use, the requirements of this paragraph (c)(6) apply even though the taxpayer intends to, or subsequently does, sell, lease, or license the computer software.

§ 1.41–4(c)(6)(iv). TD 8930, therefore, did not provide a specific definition of internal-use software but instead identified two general categories of software as examples of internal-use software: software ''used internally'' and software used ''in providing noncomputer services.'' TD 8930 eliminated the general facts and circumstances standard contained in the 1997 proposed regulations.

The preamble to TD 8930 addressed the requests made by some commentators that the definition of internal-use software exclude software used to deliver a service to customers and software that includes an interface with customers or the public. The preamble stated that after careful analysis of the legislative history, the Treasury Department and the IRS had concluded that such broad exclusions would be inconsistent with the statutory mandate, because the exclusion would extend to some software that Congress clearly intended to treat as internal-use software. The preamble, however, continued by highlighting changes that had been made in TD 8930 to take into account the commentators' concerns as well as the legislative history to the 1999 Act.

First, TD 8930 provided that the high threshold of innovation test applicable to internal-use software does not apply to software used to provide computer services (defined in TD 8930 generally as a service offered by a taxpayer to customers who conduct business with the taxpayer primarily for the use of the taxpayer's computer or software technology). In contrast, software used

to provide a noncomputer service (defined in TD 8930 generally as a service other than a computer service, even if such other service is enabled, supported, or facilitated by computer or software technology) would be subject to the high threshold of innovation test under TD 8930.

Second, TD 8930 contained a new exception to the high threshold of innovation test for internal-use software for software used to provide a noncomputer service if the software, among other things, contained features or improvements not yet offered by a taxpayer's competitors. In describing this exception, the preamble to TD 8930 stated:

> This exercise of regulatory authority [to create the exception for certain software used to provide non-computer services] is based on a determination that the development of software containing features or improvements that are not available from a taxpayer's competitors and that provide a demonstrable competitive advantage is more likely to increase the innovative qualities and efficiency of the U.S. economy (by generating knowledge that can be used by other service providers) than is the development of software used to provide noncomputer services containing features or improvements that are already offered by others. IRS and Treasury believe that drawing such a line is an appropriate way to administer the credit with a view to identifying and facilitating the credit availability for software with the greatest potential for benefiting the U.S. economy, an important rationale for the research credit.

In response to taxpayer concerns, on January 31, 2001, the Treasury Department and the IRS published Notice 2001–19 (2001–10 I.R.B. 784), announcing that the Treasury Department and the IRS would review TD 8930 and reconsider comments previously submitted in connection with the finalization of TD 8930.

2001 Proposed Regulations

On December 26, 2001, the Treasury Department and the IRS published in the **Federal Register** (66 FR 66362) a notice of proposed rulemaking (REG–112991–01) reflecting their review of TD 8930 (2001 proposed regulations). The 2001 proposed regulations revised the definition of internal-use software as compared to the definitions contained in the 1997 proposed regulations and TD 8930. The definition in the 2001 proposed regulations was based on a presumption that turns on whether the software is developed to be commercially sold, leased, licensed, or otherwise marketed for separately stated consideration:

> *Unless computer software is developed to be commercially sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties,* computer software is presumed developed by (or for the benefit of) the taxpayer primarily for the taxpayer's internal use. For example, the computer software may serve general and administrative functions of the taxpayer, or may be used in providing a noncomputer service. General and administrative functions include, but are not limited to, functions such as payroll, bookkeeping, financial management, financial reporting, personnel management, sales and marketing, fixed asset accounting, inventory management and cost accounting. Computer software that is developed to be commercially sold, leased, licensed or otherwise marketed, for separately stated consideration to unrelated third parties is not developed primarily for the taxpayer's internal use. The requirements of this paragraph (c)(6) apply to computer software that is developed primarily for the taxpayer's internal use even though the taxpayer subsequently sells, leases, licenses, or otherwise markets the computer software for separately stated consideration to unrelated third parties.

Prop. § 1.41–4(c)(6)(iv) (2001) (emphasis added).

As explained in the preamble to the 2001 proposed regulations, this ''separately stated consideration'' standard reflected the Treasury Department and the IRS' determination that software that is sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties is software that is intended to be used primarily by the customers of the taxpayer, whereas software that does not satisfy this requirement is software that is intended to be used primarily by the taxpayer for its internal use or in connection with a noncomputer service provided by the taxpayer. The 2001 proposed regulations modified the hardware-software exception and continued to provide that software used to provide computer services was not required to satisfy the additional qualification requirements imposed on internal-use software. The new proposed regulations, however, eliminated the special rule in TD 8930 for certain software used to provide noncomputer services. The preamble to the 2001 proposed regulations explained that ''[d]ue to other revisions contained in these proposed regulations, Treasury and the IRS believe that the computer software targeted by this rule generally would be credit eligible without this rule.''

The preamble to the 2001 proposed regulations also addressed the continued concerns expressed by some commentators that the definition of internal-use software should not include software used to deliver a service to customers and software that includes an interface with customers or the public. In addition to repeating the Treasury Department and IRS' concern that such exclusions may conflict with Congress' intent regarding software used in the provision of noncomputer services, the preamble stated that an exclusion for software that includes an interface with customers or the public would entail substantial administrative difficulties and ''may inappropriately permit certain categories of costs (*e.g.*, certain web site development costs) to constitute qualified research expenses without having to satisfy the high threshold of innovation test.''

Discussion

Prior regulatory guidance generally reflects three approaches to the definition of internal-use software. First, the 1997 proposed regulations closely mirrored the language contained in the legislative history but did not provide a specific definition of internal-use. Instead, the 1997 proposed regulations used the ''general and administrative functions'' and ''noncomputer services'' language from the legislative history as examples of internal-use software and provided that the determination of whether particular software was internal-use software required an evaluation of ''all relevant facts and circumstances.''

TD 8930 then attempted to provide greater specificity regarding the definition of internal-use software. Although TD 8930 eliminated the facts and circumstances test in the 1997 proposed regulations, TD 8930 continued to provide a general definition of internal-use software that incorporated the legislative history's examples of general and administrative functions and non-computer services. Additionally, TD 8930 provided that software used by the taxpayer to provide ''computer services'' was not subject to the high threshold of innovation test applicable to internal-use software, and provided definitions of *computer services* and *noncomputer services.* The exception for computer services software, however, required a determination of the primary reason why a taxpayer's customers conduct business with the taxpayer. TD 8930 also applied this exception to certain software used to provide ''noncomputer services'' provided that the software satisfied additional requirements intended to identify software containing new features or improvements that provide a competitive advantage to the taxpayer.

Finally, the 2001 proposed regulations prescribed a bright-line, separately-stated consideration rule for determining which software is treated as

internal-use software for purposes of the research credit. (The 2001 proposed regulations retained the exception for software used to provide computer services, but removed the special rule for noncomputer services. Additionally, the 2001 proposed regulations expanded upon the list of general and administrative functions contained in the legislative history and expanded the exception for integrated software-hardware products.) The purpose of this rule was to provide a clear definition of internal-use software that could be readily applied by taxpayers and more readily administered by the IRS.

Numerous comments were received in response to the 1997 proposed regulations, TD 8930 and Notice 2001–19, and the 2001 proposed regulations regarding the provisions relating to internal-use software. Although commentators addressed virtually all aspects of the internal-use software provisions in the various iterations of regulations, most of the comments focused on the definition of internal-use software. As previously stated, many commentators believed that the definition of internal-use software should exclude any software used to deliver a service to customers and any software that includes an interface with customers or the public. Some commentators suggested, as an alternative, that the statutory production process exception be extended to software used in connection with the provision of services.

With respect to the definition of internal-use software in the 2001 proposed regulations, commentators stated that the separately-stated consideration test was a poor indication of when computer software was developed ''primarily for internal use by the taxpayer'' and directly conflicted with the legislative history to the 1999 Act. In support of a narrower definition of internal-use software, these commentators pointed to technological advancements and changes to the role of computer software in business activities since the exclusion for internal-use software was enacted in 1986, including the increased development of computer software by taxpayers, the increased use of computer software in all aspects of business activity, and the role of computer software (often integrated across a business) in providing goods and services in addition to the internal operations of a business. Commentators further argued that the definition should be based on the underlying functionality of the software (*i.e.*, whether the software, in light of the facts and circumstances, is used to deliver services or goods to a taxpayer's customers). Commentators urged that a functionality rule is preferable to a bright-line rule (such as the separately-stated consideration rule in TD 8930) even though a bright-line rule provided a clearer rule for identifying internal-use software for purposes of the research credit.

The Treasury Department and the IRS are continuing to consider the concerns raised by commentators in response to the definition of internal-use software contained in the 2001 proposed regulations, including the concern that the separately-stated consideration test is over-inclusive. Nevertheless, the Treasury Department and the IRS are concerned that the alternatives, including expanded or modified exceptions, proposed by commentators generally would make the definition of internal-use software more complex without providing additional clarity. Several commentators suggested similar definitions that would exclude software that, for example, is ''integral and essential'' to the provision of services with integral defined as software that directly ''enables, supports, or facilitates'' a service. Some commentators suggested a definition that would exclude software that is ''primarily used'' by customers, suppliers, or other third parties. Other commentators suggested a definition that would limit internal-use software to software that is developed primarily for use in general and administrative functions that enable, facilitate, or support the taxpayer's conduct of the taxpayer's trade or business, but would exclude certain customer interface software. These suggestions would introduce many terms (including *enable, support, facilitate, primarily*) that, due to their subjective nature, the Treasury Department and the IRS believe would be prone to controversy and could not be readily applied by taxpayers or administered by the IRS. Another commentator suggested limiting the definition of internal-use software to software used to perform a specifically enumerated list of general and administrative functions. Some commentators, however, have noted that the often highly integrated nature of software development today makes it difficult, if not impossible, to divide software development projects into separate components, and thus a list approach may not be administrable. Finally, as part of their review of these comments, the Treasury Department and the IRS also reviewed the possibility of using definitions of internal-use software contained in prior guidance.

In light of the statute, the legislative history, the history of the regulations regarding internal-use software, and the comments received, the Treasury Department and the IRS have decided not to finalize in TD 9104 the provisions in the 2001 proposed regulations relating to internal-use software. Instead, the Treasury Department and the IRS are issuing this ANPRM to solicit further comments regarding the definition of internal-use software as well as other provisions affecting the qualification of internal-use software for the research credit. The Treasury Department and the IRS are mindful that Congress specifically intended that computer software ''developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer'' be subject to additional requirements before the software could qualify for the research credit. At the same time, the Treasury Department and the IRS recognize that there have been changes in computer software, and its role in business activity, since the mid-1980s. In light of these changes, the Treasury Department and the IRS are concerned about the difficulty of effecting Congressional intent behind the exclusion for internal-use software with respect to computer software being developed today. Despite Congress' broad grant of regulatory authority in section 41(d)(4)(E), the Treasury Department and the IRS believe that this authority may not be broad enough to resolve those difficulties.

Accordingly, the Treasury Department and the IRS request comments regarding a definition of internal-use software that appropriately reflects the statute and legislative history, can be readily applied by taxpayers and readily administered by the IRS, and is flexible enough to provide continuing application into the future. In submitting comments, commentators are invited to address any of the definitions included in prior guidance as well as other definitions that have been proposed to the Treasury Department and the IRS by commentators.

In addressing these alternatives, commentators also are invited to discuss how software development efforts that encompass both internal-use software and non-internal use software should be addressed under any particular definition. The Treasury Department and the IRS are concerned that the tendency toward the integration of software across many functions of a taxpayer's business activities may make it difficult for both taxpayers and the IRS to separate internal-use software from non-internal use software (or software not subject to additional

qualification requirements) under any particular definition of internal-use software. In addition, the Treasury Department and the IRS are concerned that a definition of internal-use software that relies upon the ''primary'' or ''principal'' use of that software would be difficult to apply and administer. The Treasury Department and the IRS' continuing goal is that any final rule must provide clear, objective guidance on what software is treated as internal-use software for purposes of the research credit.

Effective Dates

On December 31, 2003, the Treasury Department and the IRS issued final regulations (TD 9104) relating to the definition of qualified research under section 41(d). The final regulations apply to taxable years ending on or after December 31, 2003. The final regulations do not contain final rules for research with respect to computer software ''which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer'' for purposes of section 41(d)(4)(E) (*i.e.*, internal-use software).

The Treasury Department and the IRS have announced in prior guidance, including Notice 87–12 (1987–1 C.B. 432) and more recently in the 2001 proposed regulations, that final regulations relating to internal-use software generally will be effective for taxable years beginning after December 31, 1985. In light of the length of time that has passed since 1986, as well as the developments with respect to computer software discussed in this ANPRM, the Treasury Department and the IRS request comments on whether final regulations relating to internal-use software should have any retroactive effect.

With respect to internal-use software for taxable years beginning after December 31, 1985, and until further guidance is published in the **Federal Register**, taxpayers may continue to rely upon all of the provisions relating to internal-use software in the 2001 proposed regulations (66 FR 66362). Alternatively, taxpayers may continue to rely upon all of the provisions relating to internal-use software in TD 8930 (66 FR 280). For example, taxpayers relying upon the internal-use software rules of TD 8930 must also apply the ''discovery test'' as set forth in TD 8930.

Request for Public Comment

The Treasury Department and the IRS invite interested persons to submit comments (in the manner described in the **ADDRESSES** caption) on issues arising under the provisions for internal-use software. The Treasury Department and the IRS invite comments that address any of the definitions included in prior guidance as well as other definitions that have been proposed to the Treasury Department and the IRS by commentators. Specifically, the Treasury Department and the IRS invite comments that provide a definition of internal-use software that—

1. Appropriately reflects the statute and legislative history;

2. Can be readily applied by taxpayers and readily administered by the IRS; and

3. Is flexible enough to provide continuing application in the future.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–31819 Filed 12–31–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–146893–02, REG–115037–00]

RIN 1545–BB31, 1545–AY38

Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a correction of a notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a correction of a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Wednesday, December 17, 2003 (68 FR 70214). The proposed regulations provide guidance regarding the treatment of controlled services transactions under section 482 and the allocation of income from intangibles, in particular when one controlled taxpayer performs activities that increase (or are expected to increase) the value of an intangible owned by another controlled taxpayer.

FOR FURTHER INFORMATION CONTACT: Helen Hong-George, (202) 435–5265 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of this correction is under section 482 of the Internal Revenue Code.

Need for Correction

As published, the correction to the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the correction to a notice of proposed regulations and notice of public hearing (REG–146893–02, REG–115037–00), that was the subject of FR Doc. 03–31034, is corrected as follows:

On page 70215, column 1, item 3, third line from the bottom of the paragraph, the language, ''expressed as ration'' is corrected to read ''expressed as ratio''.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 03–31824 Filed 12–31–03; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register
Vol. 69, No. 1
Friday, January 2, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, January 19, 2004. The Madera Resource Advisory Committee will meet at the USDA Forest Service Office in North Fork, CA. The purpose of the meeting is: review new RAC proposals, review progress of FY 2002 accounting, monitoring and evaluation, arrowhead presentation, and review Sierra business council book.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, January 19, 2004. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the USDA Forest Service Office, Bass Lake Ranger District, 57003 Road 225, North Fork, CA 93643.

FOR FURTHER INFORMATION CONTACT: Dave Martin, USDA, Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA, 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review new RAC proposals, (2) review progress of FY 2002 accounting, (3) monitoring and evaluation, (4) Arrowhead presentation, and (5) review of Sierra business council book. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: December 23, 2003.

Gayne L. Sears,

Acting District Ranger.

[FR Doc. 03–32245 Filed 12–31–03; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: January 6, 2004; 1 p.m.–4 p.m.

PLACE: Broadcasting Board of Governors, 330 Independence Avenue, SW., Washington, DC 20237.

Closed Meeting:

The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: December 30, 2003.

Carol Booker,

Legal Counsel.

[FR Doc. 03–32326 Filed 12–30–03; 2:21 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1312]

Expansion of Foreign-Trade Zone 82; Mobile, AL, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of Mobile, grantee of Foreign-Trade Zone 82, submitted an application to the Board for authority to expand FTZ 82–Site 1 and to include twelve additional sites (Sites 2–13) in the Mobile, Alabama, area, within the Mobile Customs port of entry (FTZ Docket 19–2003; filed 4/11/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 19498, 4/21/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal, with respect to Sites 1 through 12, is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 82 (Sites 1–12) is approved (but not proposed Site 13), subject to the Act and the Board's regulations, including § 400.28, subject to the Board's standard 2,000-acre activation limit for the overall zone project, and further subject to a sunset provision that would terminate authority for the proposed sites on January 31, 2011, unless the sites are activated under FTZ procedures.

Signed at Washington, DC, this 19th day of December, 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–32295 Filed 12–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1309]

Grant of Authority for Subzone Status; American Italian Pasta Company Distribution Facility (Dry Pasta Products); Tolleson, AZ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved; and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of Phoenix, Arizona, grantee of Foreign-Trade Zone 75, has made application to the Board for authority to establish special-purpose subzone status at the dry pasta distribution facility of the American Italian Pasta Company in Tolleson, Arizona (FTZ Docket 11–2003, filed March 4, 2003);

Whereas, notice inviting public comment has been given in the **Federal Register** (68 FR 12035, 3/13/03); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the dry pasta distribution facility of the American Italian Pasta Company, located in Tolleson, Arizona (Subzone 75I), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 19th day of December 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–32293 Filed 12–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1313]

Expansion of Foreign-Trade Zone 22; Chicago, IL, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Illinois International Port District, grantee of Foreign-Trade Zone 22, submitted an application to the Board for authority to expand FTZ 22 to include a new site (Site 5) at the CenterPoint Intermodal Center in Elwood (Will County), Illinois, within the Chicago Customs port of entry (FTZ Docket 23–2003; filed 5/12/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 27527, 5/20/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 22 is approved, subject to the Act and the Board's regulations, including § 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 19th day of December, 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–32296 Filed 12–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1311]

Expansion of Foreign-Trade Zone 138, Columbus, OH, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Columbus Regional Airport Authority, grantee of Foreign-Trade Zone 138, submitted an application to the Board for authority to expand and reorganize FTZ 138 by deleting 977 acres from existing Site 1A, expanding Site 1 to include additional parcels (503 acres; Sites 1A, 1D, 1E, 1F and 1G), moving 50 acres from existing Site 1B to proposed Site 1F, and including five additional sites (340 acres; Sites 7–11), adjacent to the Columbus Customs port of entry (FTZ Docket 12–2003; filed 3/5/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 11806, 3/12/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand and reorganize FTZ 138 is approved, subject to the Act and the Board's regulations, including Section 400.28, subject to the Board's standard 2,000-acre activation limit for the overall zone project, and further subject to a sunset provision that would terminate authority for the proposed sites on December 31, 2008, unless the sites are activated under FTZ procedures.

Signed at Washington, DC this 17th day of 2003.

James J. Jochum,

Assistant Secretary of Commerce, for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–32294 Filed 12–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of January 2004, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping Duty Proceedings	
Brazil: Brass Sheet and Strip, A–351–603	1/1/03—12/31/03
Brazil: Stainless Steel Wire Rod, A–351–819	1/1/03—12/31/03
Canada: Brass Sheet and Strip, A–122–601	1/1/03—12/31/03
France: Anhydrous Sodium Metasilicate (ASM), A–427–098	1/1/03—12/31/03
France: Stainless Steel Wire Rods, A–427–811	1/1/03—12/31/03
South Africa: Ferrovanadium, A–791–815	7/8/02—12/31/03
Taiwan: Top-of-the-Stove Stainless Steel Cooking Ware, A–583–603	1/1/03—12/31/03
The People's Republic of China: Ferrovanadium, A–570–873	7/8/02—12/31/03
The People's Republic of China: Folding Gift Boxes, A–570–866	1/1/03—12/31/03
The People's Republic of China: Potassium Permanganate, A–570–001	1/1/03—12/31/03
The Republic of Korea: Top-of-the Stove, Stainless Steel Cooking Ware, A–580–601	1/1/03—12/31/03
Countervailing Duty Proceedings	
Brazil: Brass Sheet and Strip, C–351–604	1/1/03—12/31/03
Taiwan: Top-of-the-Stove Stainless Steel Cooking Ware, C–583–604	1/1/03—12/31/03
The Republic of Korea: Top-of-the-Stove Stainless Steel Cooking Ware, C–580–602	1/1/03—12/31/03

Suspension Agreements

None.

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department changed its requirements for requesting reviews for countervailing duty orders. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See* also the Import Administration Web site at *http://www.ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of January 2004. If the Department does not receive, by the last day of January 2004, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from rehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 30, 2003.

Gary Taverman,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–32325 Filed 12–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of Five-Year (''Sunset'') Reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review,* which covers these same orders.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–5050, or Mary Messer, Office of Investigations, U.S. International Trade Commission, at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating sunset reviews of the following antidumping duty orders:

DOC case No.	ITC case No.	Country	Product
A–475–059	AA–1921–167	Italy	Pressure Sensitive Plastic Tape.
A–588–068	AA–1921–188	Japan	Prestressed Concrete Steel Wire Strand.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Department's regulations regarding sunset reviews (19 CFR 351.218) and *Sunset Policy Bulletin,* the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/*.

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset Web site for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset Web site based on notifications from parties and participation in this review. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102(6)) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic interested parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: December 19, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–32297 Filed 12–31–03; 8:45 am]

BILLING CODE 3510–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation, 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122303F]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings of the North Pacific Fishery Management Council Fur Sea Committee.

SUMMARY: The North Pacific Fishery Management Council (Council) Steller Sea Lion Mitigation Committee will hold a public meeting.

DATES: The meeting will be held on January 20, 2004, 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Bldg 4, National

Marine Mammal Laboratory 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: Bill Wilson, Council staff; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: Agenda–(1) Introductions, (2) receive report from NMFS on Proposal Package and Discuss Any Issues, (3) update on schedule for preparation of Environmental Assessment and completion of rulemaking, (4) adaptive management - experimental design update, (5) other business as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 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 action to address the emergency.

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: December 30, 2003.

Richard W. Surdi,

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

[FR Doc. E3–00686 Filed 12–31–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Funding Opportunity

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of availability of a funding opportunity.

SUMMARY: Notice is hereby given of the intent to issue a Funding Opportunity No. DE–PS26–04NT15460 entitled ''Focused Research in Federal Lands Access and Produced Water Management in Oil and Gas Exploration and Production.'' The Department of Energy (DOE) National Energy Technology Laboratory (NETL), on behalf of its National Petroleum Technology Office (NPTO), seeks applications for cost-shared research projects that address specific Federal lands access or produced water management issues faced by the oil and gas industry. Applications will either address (1) solutions to improve access to oil and gas resources on Federal lands or (2) produced water management issues in low cost treatment technologies, beneficial use of produced water, or best management practices for handling, treatment and/or disposal. The goal is to provide solutions to issues that are limiting domestic on-shore or off-shore production while providing the same or higher levels of environmental protection.

DATES: The Funding Opportunity will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business* and on the ''Industry Interactive Procurement System'' (IIPS) Web page located at *http://e-center.doe.gov* on or about January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Martin Byrnes, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236–0940. E-mail address: *Martin.Byrnes@netl.doe.gov,* telephone number: 412–386–4486.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) National Energy Technology Laboratory (NETL), on behalf of its National Petroleum Technology Office (NPTO), is soliciting applications for cost-shared research projects that address access to Federal lands or produced water management issues faced by the oil and gas industry. The goal is to provide solutions to issues that are limiting domestic on-shore or off-shore production while providing the same or higher levels of environmental protection.

The mission of the Department of Energy's Fossil Energy Oil Program is derived from the National need for increased oil production for national security, requirements for Federal lands stewardship, and increased protection of the environment. The Oil and Gas Environmental Program supports those goals and the National Energy Policy goal of increasing domestic oil and gas production, by providing technologies and approaches that reduce the cost of effective environmental protection and by providing technologies and approaches that improve environmental protection.

The program will accept applications for cost-shared research projects that address (1) solutions to improve access to Federal lands or (2) produced water management issues in low cost treatment technologies, beneficial use of produced water, or best management practices for handling, treatment and/or disposal. The goal of this Funding Opportunity is to provide solutions to issues that are limiting domestic on-shore or off-shore production while providing the same or higher levels of environmental protection. These access issues and produced water management issues are limiting domestic production by restricting additional development or by adding costs that cause operators to abandon existing wells while substantial recoverable reserves remain in the ground.

The issues listed above are multi-faceted problems. In many cases, the overall solution may vary by region or may require several separate steps to resolve completely. Selected projects are expected to describe the overall problem and the region or regions affected as well as describing how the proposed project fits into the overall solution. Selected projects are also expected to describe as completely as possible the impact that the project will have on increasing or maintaining domestic production. The description of the production impact should discuss in detail the resource affected and the amount of domestic production that can be added or maintained as a result of the successful completion of the project.

DOE anticipates issuing financial assistance (Cooperative Agreement) awards. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards will be made. Multiple awards are anticipated. Approximately $9 million of DOE funding is planned over a 3 year period for this Funding Opportunity. The program seeks to sponsor projects for a single budget/project period of 36 months or less. All applicants are required to cost share at a minimum of 20% of the project total for projects submitted under the two areas of interest. Details of the cost sharing requirements, and the specific funding levels will be identified in Funding Opportunity. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the Funding Opportunity package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Funding Opportunity Announcement. The actual Funding Opportunity

Announcement will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on December 19, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–32266 Filed 12–31–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Intent To Issue a Funding Opportunity Announcement

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of intent to issue funding opportunity announcement.

SUMMARY: Notice is hereby given of the intent to issue Funding Opportunity Announcement No. DE–PS26–04NT42068 entitled State Energy Program (SEP) Special Projects Opportunity for Funding. The Department of Energy's (DOE's) Office of Energy Efficiency and Renewable Energy (EERE) is anticipating the availability of financial assistance to the States for a group of special project activities. Funding is being provided by a number of programs in the EERE Office. States may apply to undertake any of the projects being offered by these programs. Financial assistance will be awarded to the States separately for each special project, with activities to be carried out in conjunction with their efforts under SEP. The special project's funding and activities are tracked separately so that the DOE Program Offices may follow the progress of individual projects.

DATES: The funding opportunity will be available on the ''Industry Interactive Procurement System'' (IIPS) Web page located at *http://e-center.doe.gov* on or about January 8, 2004. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Kelly A. McDonald, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880 / 3610 Collins Ferry Road, Morgantown, WV 26507–0880. E-mail address: *kelly.mcdonald@netl.doe.gov,* telephone number: (304) 285–4113.

SUPPLEMENTARY INFORMATION: The proposed projects must meet the relevant requirements of the program providing the funding, as well as of the SEP as specified in the 2004 State Energy Program Special Projects Funding Opportunity. The goals of the special projects activities are to directly involve States in activities to accelerate deployment of energy efficiency and renewable energy technologies; to facilitate the commercialization of emerging and underutilized technologies; and to increase the responsiveness of federally-funded technology development efforts to the needs of the marketplace.

Fiscal Year 2004 is the ninth year special project activities have been funded in conjunction with the State Energy Program (10 CFR 420). Most of these special projects are related to or based on similar efforts that have been funded by other DOE programs.

Availability of Fiscal Year 2004 Funds

With this publication, DOE is anticipating the availability of an estimated $14 million in new financial assistance awards from Fiscal Year 2004 appropriations. DOE's obligation for performance of this Funding Opportunity is contingent upon the availability of appropriated funds from which financial assistance awards can be made.

The awards will be made through a competitive process. The programs that are participating in the State Energy Program Special Projects Opportunity for Fiscal Year 2004, with the estimated amount of funding available for each, are as follows:

- *Clean Cities:* This program will provide funds to support the deployment of alternative fuels and alternative fuel vehicles (AFV) in the following six categories: (1) Projects that promote acquisition of commercially-available AFV's that maximize alternative fuel use, especially when those vehicles support an AFV niche market activity center or niche deployment strategy; (2) projects that promote AFV infrastructure development; (3) projects that promote truck idle reduction technologies; (4) projects that promote alternative fuel ferry demonstrations; (5) projects that promote the acquisition of AFV school buses and refueling infrastructure; and (6) projects that support coalition activities ($5,000,000).
- *Industrial Technology Program:* The objective of this program is to broaden the impact of investments in advanced industrial technologies and practices geared toward energy savings and waste reduction. This will be done through increased partnerships composed of State agencies, universities, and local small and mid-sized manufacturing entities ($1,500,000).
- *Building Codes and Standards:* This program will support States' actions to adopt, update, implement, enforce and evaluate the effectiveness of their residential and commercial building energy codes ($1,650,000).
- *Rebuild America:* This program supports Rebuild America State Programs which are consistent with the Rebuild America Strategic Plan that identifies specific and measurable building and related energy saving projects. The goal is for 50 percent of the partnerships to have completed at least one major building renovation project by 2005. The partnerships must define a program and process that would show a significant opportunity for completion of building projects ($3,000,000).
- *Building America:* Applications under this program should include research that coordinates with Building America's goal of creating building system performance packages that make new houses 40 percent to 70 percent more energy efficient than those built to local building code standards. Existing houses should be 30 percent more energy efficient than the local building code ($400,000).
- *Federal Energy Management Program:* Applications should promote and facilitate sustainable design and construction, energy efficient operations and maintenance, distributed and renewable energy, renewable energy purchases, siting of renewable power on Federal sites, and assessment and implementation of load and energy reduction techniques ($400,000).
- *Solar Technology Program:* The objective of this program is to deploy solar energy technologies onto brownfield sites in a manner consistent with local economic development activities and relevant local, State and Federal environmental regulations using the following activities: (1) Solar arrays located directly on the site; (2) solar technologies integrated into buildings on site; and (3) solar energy businesses located directly on site ($250,000).
- *State Wind Energy Support:* Applications will be sought for instrumentation of existing tall towers (100 meters or taller) in areas suitable for potential wind power development where wind shear is expected to be a significant factor. ($250,000).
- *Distributed Energy and Electric Reliability—Regional Combined Cooling Heating and Power Applications Centers:* The objectives of the Regional Application Centers will be to provide essential and appropriate applied research and development support, focused on the technology transfer and deployment of advanced Combined

Heat and Power (CHP) technologies. The Regional Application Centers will achieve this objective through targeted education and outreach programs as well as project assistance ($800,000).

• *Biomass:* To foster significant penetration of biomass-based technologies and products, cost-shared applications are sought under two broad categories: (1) Outreach and information transfer to consumers, producers, and industry; or (2) development of innovative State or local incentives that facilitate increased market development of bio-based power, fuels, and other valuable products ($600,000).

Restricted Eligibility

Eligible applicants under this opportunity are limited to the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U. S. Virgin Islands. Applications must be submitted by the State Energy Office or other agency responsible for administering the State Energy Program pursuant to 10 CFR part 420, although States may work in collaboration with non-State partners. For convenience, the term ''State'' in the funding opportunity will refer to all eligible applicants.

The Catalog of Federal Domestic Assistance number assigned to the State Energy Program Special Projects is 81.119.

Requirements for cost sharing contributions will be addressed in each category in the anticipated opportunity. Cost sharing contributions beyond any required percentage are desirable.

Evaluation Review and Criteria

A first tier review for compliance will be conducted by the DOE NETL office. Applications found to be in compliance will undergo a merit review process by panels comprised of members representing the participating programs at DOE's Office of Energy Efficiency and Renewable Energy. DOE reserves the right to fund, in whole or in part, any, all or none of the applications submitted in response to this notice.

Once released, the funding opportunity will be available for downloading from the IIPS Internet page. At this Internet site, an applicant will also be able to register with IIPS, enabling submission of an application. Technical assistance in registering with IIPS, or any other IIPS function, may be obtained via calling the IIPS Help Desk at (800) 683–0751, or E-mailing the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The funding opportunity will only be made available in IIPS, no hard (paper) copies of the opportunity and related documents will be made available. Once the funding opportunity is issued, all questions regarding the opportunity must be submitted via the ''Submit Question'' feature in IIPS; the Government reserves the right to not answer questions submitted via any method other than the ''Submit Question'' feature in IIPS. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the funding opportunity package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the opportunity.

Issued in Pittsburgh, PA on December 17, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–32267 Filed 12–31–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1656–017]

California Independent System Operator Corporation; Notice of Extension of Time

December 24, 2003.

On December 19, 2003, the California Independent System Operator Corporation (the CAISO) filed a motion for an extension of time within which to file data pursuant to two requests issued by the Commission on December 16, 2003, relating to the CAISO's Revised MD02 Proposal and the Commission's October 28 Order.[1] The Commission's requests were contained in a Notice of Technical Conference and a letter from Jamie Simler, Director, Division of Tariffs and Market Development—West (the Letter) to the CAISO, respectively. The Notice of Technical Conference directed the CAISO to file information to clarify:

- The CAISO's proposed approach to allocation of marginal losses;
- The revised pricing mechanism for setting prices for constrained output generators in the forward market;
- A statement made by the CAISO in relation to sales of energy from capacity committed in the day-ahead residual unit commitment process; and
- The CAISO's concern that the purchase of only capacity may undermine incentives to imports in the residual unit commitment process.

The Letter directed the CAISO to file specific responses to clarify and provide a further explanation of the methodologies and approaches proposed to be adopted by the CAISO to determine which resources are subject to local market power mitigation, and to provide three specific examples employing the proposed methodologies.

The responses and information were directed to be filed by no later than January 7, 2004.

The CAISO's motion states that due to the holiday season, key personnel within the CAISO will be unavailable and that the CAISO is therefore unable to meet this deadline. The CAISO therefore requests an extension of time for filing the information in response to the Notice of Technical Conference until January 14, 2004, and an extension of time for filing the responses pursuant to the Letter until January 23, 2004.

Upon consideration, notice is hereby given that an extension of time for the CAISO to comply with the Commission's request in the Notice of Technical Conference is granted to January 14, 2004, and an extension of time for the CAISO to comply with the request in the Letter is granted to January 16, 2004.

As previously advised, interested parties are invited to file comments by January 14, 2004 in relation to the October 28 Order and in relation to issues arising from the November 6 Technical Conference. Interested parties are also invited to file reply comments by January 20, 2004 in response to the additional information provided by the CAISO on January 14, 2004.

Summary of Deadlines

Deadline for CAISO clarification pursuant to December 16, 2003 Notice of Technical Conference; and Deadline for Interested Parties' Comments on October 28 Order and November 6, 2003 Technical Conference: January 14.

Deadline for CAISO additional information on local market power mitigation pursuant to December 16 Letter: January 16.

Deadline for Interested Parties' responses to CAISO January 14, 2004 clarification: January 20.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00669 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

[1] California Independent System Operator Corporation, 105 FERC ¶ 61,140 (2003) (October 28 Order).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–117]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

December 24, 2003.

Take notice that on December 17, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective December 18, 2003:

Third Revised Sheet No. 861
Third Revised Sheet No. 862
First Revised Sheet No. 893

CEGT states that the purpose of this filing is to reflect the expiration of several negotiated rate transactions.

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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00667 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–48–000]

Chanderleur Pipe Line Company; Notice of Application

December 24, 2003.

Take notice that on December 19, 2003, Chandeleur Pipe Line Company (Chandeleur), filed with the Federal Energy Regulatory Commission (Commission) pursuant to section 7(C) of the Natural Gas Act, and part 157 of the Commission's Regulations its abbreviated application for a certificate of public convenience and necessity authorizing the acquisition and subsequent integration of Chevron Natural Gas Pipeline LLC's (CNGPL) interest in CNGPL's existing gathering system known as the Mobile Area Gathering System (MAGS) encompassing approximately 32 miles of 12-inch pipeline running between Unocal's MO 861 platform in waters of the Outer Continental Shelf (OCS), and downstream interstate pipelines onshore at Coden, Alabama, in the vicinity of Mobile Bay.

The 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 for TTY, contact (202) 502–8659.

Any questions regarding the application may be directed to Linda L. Geoghegan, 2811 Hayes Road, Houston, TX 77082, telephone (281) 596–3592, or by e-mail at *GoeghLL@ChevronTexaco.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervener status.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area,

and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

Comment Date: January 23, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00668 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–113–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 24, 2003.

Take notice that on December 19, 2003, Colorado Interstate Gas Company (CIG) tendered for filing to be part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective January 19, 2004:

Fourth Revised Sheet No. 383A
Second Revised Sheet No. 407
Second Revised Sheet No. 413
Second Revised Sheet No. 420
Fifth Revised Sheet No. 427

CIG states that the tariff sheets revise its Form of Service Agreements applicable to service under CIG's firm rate schedules to include additional contracting flexibility in the manner in which amended service agreements relate to prior agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00682 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–109–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 24, 2003.

Take notice that on December 16, 2003, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets proposed to be effective January 15, 2004:

Second Revised Tariff Sheet No. 217
Second Revised Tariff Sheet No. 221

Eastern Shore states that the purpose of this filing is to revise its tariff to ''de-link'' its deferred GRO account from section 35, Refund of Cash Out Revenues in Excess of Costs and include such deferred account as a component of its current Fuel Retention Percentage, in much the same manner as is done in numerous other pipeline tariffs. Eastern Shore also states that such revision would permit it to recover on a more current basis any such under-recoveries from those customers on its system at the time such under-recovery was incurred.

Eastern Shore further states that it proposes to revise section 35 of its GT&C to permit it to calculate and implement an annual surcharge for an under-recovered balance (*i.e*, cash out costs in excess of cash out revenues) at the end of the annual cash out period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00678 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–114–000]

Egan Hub Partners, L.P. and Egan Hub Partners LLC; Notice of Tariff Filing

December 24, 2003.

Take notice that on December 19, 2003, Egan Hub Partners, L.P. (Egan Hub) and Egan Hub Partners LLC (Egan Hub LLC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 to reflect a corporate name change to become effective January 1, 2004.

Egan Hub and Egan Hub LLC state that copies of its transmittal letter and appendices have been mailed to all affected customers 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 Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00683 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–110–000]

El Paso Natural Gas Company; Notice of Tariff Filing

December 24, 2003.

Take notice that on December 16, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective February 13, 2004:

Eleventh Revised Sheet No. 202B
First Revised Original Sheet No. 287A
Original Sheet No. 287B
Fourth Revised Sheet No. 288
First Revised Sheet No. 288A
Second Revised Sheet No. 353
First Revised Original Sheet No. 353A

El Paso states that these tariff sheets are filed to establish procedures for re-designating primary point rights under a transportation service agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00679 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–143–054]

Great Lakes Gas Transmission Limited Partnership; Notice of Revenue Sharing Report November 2002—October 2003

December 24, 2003.

Take notice that on December 17, 2003, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed its Interruptible/Overrun (I/O) Revenue Sharing Report with the Commission in accordance with the Stipulation and Agreement (Settlement) filed on September 24, 1992, and approved by the Commission's February 3, 1993 Order issued in Docket No. RP91–143–000, *et al.*

Great Lakes states that copies of the report were sent to its firm customers, parties to this proceeding and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown 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. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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 eLibrary e-Filing link.

Protest Date: January 2, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00684 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–111–000]

Nautilus Pipeline Company, L.L.C.; Notice of Tariff Filing

December 24, 2003.

Take notice that on December 18, 2003 Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with a proposed effective date of January 1, 2004:

Fifth Revised Sheet No. 74
First Revised Sheet No. 298

Nautilus states it is filing the revised tariff sheets to reflect the change in definition of the receipt point located in St. Mary Parish, Louisiana as the result of Exxon's closure of its Garden City, Louisiana Plant and Meter No. 992204.

Nautilus states that a copy of this filing has been served upon its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00680 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Office of Energy Projects; Project No. 2082—California and Oregon Klamath Project; PacifiCorp

December 24, 2003.

Todd Olson,
Hydro Licensing Program Manager,
PacifiCorp,
825 NE, Multnomah, Suite 1500,
Portland, OR 97232.

Reference: Waiver Permitting Electronic Copies of Final License Application

Dear Mr. Olson:

This responds to your December 15, 2003, filing requesting a waiver of § 4.34(h) and § 385.2003 of the Commission's regulations to the extent that they require an original and eight paper copies of documents filed. Specifically, you asked that PacifiCorp be permitted to file an original and one paper copy, along with seven copies on compact disc (CD), of the final application for the Klamath Project.

Pursuant to § 375.302 of the Commission's regulations, I am partially granting your requested waiver. Filing an original and three copies on paper, along with five CD copies, in this case, will enable the Commission to make this filing available to the public through our Public Reference Room and via eLibrary on the Commission's website. Please also provide a copy of your final license application on CD to the Commission's Portland Regional Office.

PacifiCorp proposes to serve participants with copies of its final license application consistent with the requirements of § 385.2010(f)(3) of the Commission's regulations. Federal and state resource agencies, tribes, and active nongovernmental organizations will be provided one paper copy of the final license application. Other stakeholders will receive the application on CD. These other stakeholders would only be provided paper copies if they wish to pay the costs of printing and mailing. Please note that our regulations allow licensees to charge reasonable printing and postage fees for such documents provided to the public, including license applications [§ 16.7(e)(2)].

If you have any questions, please contact John Mudre at (202) 502–8902 or *john.mudre@ferc.gov*.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00671 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–102–001]

Pinnacle Pipeline Company; Notice of Compliance Filing

December 24, 2003.

Take notice that on December 17, 2003, Pinnacle Pipeline Company (Pinnacle) tendered for filing as part of its proposed FERC Gas Tariff, Original Volume 1, the tariff sheets listed in Appendix A to the filing.

Pinnacle states that its proposed tariff sheets are being submitted in compliance with the October 8, 2003, Certificate Order issued by the Commission in Docket No. CP03–323–000, *et al.*, which authorized Pinnacle to operate and expand an existing pipeline lateral facility in the State of New Mexico, known as the Hobbs Lateral.

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 section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00677 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–273–003]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

December 24, 2003.

Take notice that on December 19, 2003 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 certain revised tariff sheets. The enumeration and proposed effective dates of the revised tariff sheets are included in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to recalculate its fuel retention percentages for transmission services and Rate Schedule GSS storage service to be effective April 1, 2003 as a result of a Commission Order dated October 7, 2003 in Docket No. TM99–6–29 *et al.* Specifically, Transco has adjusted its fuel retention percentages to reflect (1) the revised balance in the Deferred GRO Account as of January 31, 2003 and (ii) the amortization (one-seventh) of a prior period adjustment quantity approved for collection by the Commission.

Transco states that copies of the filing are being mailed to 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 section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00676 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–388–004]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

December 24, 2003.

Take notice that on December 18, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 40P, with an effective date of February 1, 2004.

Transco states that the purpose of the instant filing is to set forth under Rate Schedule FT the incremental recourse rates for service under Phases I and II of the Momentum firm transportation service anticipated to commence February 1, 2004.

Transco states that copies of the filing are being mailed to its 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 section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown 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. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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 eFiling link.

Protest Date: January 12, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00685 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–112–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

December 24, 2003.

Take notice that on December 19, 2003, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Fourth Revised Sheet No. 89, to become effective January 19, 2004.

WIC states that the tariff sheet revises its Form of Service Agreement applicable to service under WIC's firm rate schedule to include additional contracting flexibility by permitting the parties to agree to amend and restate, rather than supersede and cancel, a prior agreement that is being revised.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00681 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC04–7–000, et al.]

Portland General Electric Company, et al.; Electric Rate and Corporate Filings

December 19, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Portland General Electric Company

[Docket No. AC04–7–000]

Take notice that on December 3, 2003, Portland General Electric Company (Portland) tendered for filing a request for waiver or extension of time to comply with the Commission's Uniform System of Accounts pertaining to natural gas pipeline companies, and the requirements for filing a FERC Form 2-A by non-major gas pipeline companies. Portland states that this request is necessitated by the change in status of Portland's facilities in the Kelso-Beaver Pipeline from pipeline facilities only serving the plant owned by Portland, to an open access gas pipeline.

Comment Date: January 5, 2004.

2. American Transmission Company LLC

[Docket No. EC04–37–000]

Take notice that on December 12, 2003, American Transmission Company LLC (ATCLLC) tendered for filing an Application for Authority to Acquire Transmission Facilities Under Section 203 of the Federal Power Act. ATCLLC requests that the Commission authorize

ATCLLC to acquire ownership of certain transmission facilities from the City of Reedsburg, Wisconsin. ATCLLC requests Commission authorization within 30 days of the date of the Application.

Comment Date: January 2, 2004.

3. Duke Energy Marketing America, LLC and Engage Energy, LLC

[Docket No. EC04–38–000]

Take notice that on December 12, 2003, Duke Energy Marketing America, LLC (DEMA) and Engage Energy, LLC (Engage) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of DEMA's acquisition of Engage.

Comment Date: January 2, 2004.

4. Sweetwater Wind 1 LLC

[Docket No. EG04–22–000]

On December 16, 2003, Sweetwater Wind 1 LLC (SWW1), a Delaware limited liability company with its principal place of business in Houston, Texas, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

SWW1 states it intends to operate a 37.5–MW wind powered generation facility currently under construction near Sweetwater, Nolan County, Texas (the Facility). SWW1 also states that when completed, the electric energy produced by the Facility will be sold into the wholesale power market of the Electric Reliability Council of Texas and that the Facility is expected to begin commercial operation by December 31, 2003.

Comment Date: January 6, 2004.

5. City of Azusa, California

[Docket No. EL04–35–000]

Take notice that on December 12, 2003, the City of Azusa, California (Azusa) submitted for filing changes to its Transmission Revenue Balancing Account Adjustment (TRBAA) and to Appendix I of its Transmission Owner (TO) Tariff. Azusa requests a January 1, 2004, effective date for its filing. Azusa further requests that the Commission waive any fees for the filing of its revised TRBAA.

Comment Date: January 8, 2004.

6. ISO New England Inc.

[ER02–2330–020]

Take notice that on December 12, 2003, ISO New England Inc. (ISO) submitted a Compliance Filing in the above-captioned proceeding as directed by the Commission in its August 14, 2003, Order Accepting Information Report, 104 FERC ¶ 61,206. The ISO states that copies of the filing have been served on all parties to the above-captioned proceeding.

Comment Date: January 2, 2004.

7. Carolina Power & Light Company d/b/a and Progress Energy Carolinas, Inc.

[Docket Nos. ER03–414–003 and ER03–415–003]

Take notice that on December 12, 2003, Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. tendered for filing revised facility interconnection and operating agreements with Cogentrix of North Carolina, Inc. in accordance with Commission Orders dated March 7, 2003, and November 18, 2003.

Progress Energy Carolinas, Inc. states that a copy of the filing was served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: January 2, 2004.

8. American Transmission Company LLC

[Docket No. ER03–1211–002]

Take notice that on December 11, 2003, American Transmission Company LLC (ATCLLC) tendered for filing a revised Generation-Transmission Interconnection Agreement between ATCLLC and Fox Energy Company LLC (Second Revised Service Agreement No. 233) consisting of amendments to Exhibit 11. ATCLLC requests retention of the original effective date of January 15, 2002. ATCLLC states that this is a refiling of the same revisions contained in ATCLLC's August 14, 2003, filing in a format complying with the Commission's conditional acceptance in its September 23, 2003, Letter Order and deleting certain extraneous documents.

Comment Date: December 31, 2003.

9. CenterPoint Energy Houston Electric, LLC

[Docket No. ER04–41–001]

Take notice that on December 15, 2003, CenterPoint Energy Houston Electric, LLC (CenterPoint Houston) submitted for filing a revision of the Table of Contents to its Transmission Service Tariff, reflecting the addition of the Form of Transmission Service Agreement.

Comment Date: January 5, 2004.

10. The Dayton Power and Light Company

[Docket No. ER04–77–001]

Take notice that on December 12, 2003, the Dayton Power and Light Company (Dayton), Cincinnati Gas and Electric Company (CG&E) and Columbus Southern Power Company (CSP) (together CCD) amended a submission made October 21, 2003, in Docket No. ER04–77–000 tendering an Interconnection Agreement between DP&L, CG&E, CSP and East Kentucky Power Cooperative.

Comment Date: January 2, 2004.

11. New England Power Pool

[Docket Nos. ER04–195–001]

Take notice that on December 12, 2003, the New England Power Pool (NEPOOL) Participants Committee submitted an informational filing to notify the Commission that as of December 5, 2003, NEPOOL, ISO New England Inc. and NRG Power Marketing Inc. (NRG Power), acting on behalf of itself and several affiliates, entered into an agreement to amend the Restated Weekly Billing Agreement filed in Docket No. ER04–195–000 on November 17, 2003.

The NEPOOL Participants Committee states that copies of these materials were served on the governors and electric utility regulatory agencies for the six New England states and each person designated on the official service list compiled by the Secretary in the captioned docket and NEPOOL Participants Committee members have been furnished with an electronic copy of this filing.

Comment Date: January 2, 2004.

12. CPV Milford, LLC

[Docket No. ER04–222–002]

Take notice that on December 16, 2003, CPV Milford, LLC tendered for filing an amendment to the application for market-based rates pursuant to section 205 of the Federal Power Act submitted on November 24, 2003, in Docket No. ER04–222–000.

Comment Date: December 29, 2003.

13. PJM Interconnection, L.L.C.

[Docket No. ER04–281–000]

Take notice that on December 12, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, Exelon Generation Company, LLC, PSEG Nuclear LLC, and PECO Energy Company and a notice of cancellation for an Interim ISA that has been superseded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a November 12, 2003, effective date for the ISA.

PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: January 2, 2004.

14. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–282–000]

Take notice that on December 12, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12, submitted for filing an Interconnection and Operating Agreement among Simon Industries, Inc., the Midwest ISO and Northern States Power, d/b/a Xcel Energy.

The Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: January 2, 2004.

15. Agway Energy Services, Inc.

[Docket No. ER04–283–000]

Take notice that on December 12, 2003, Agway Energy Services, Inc. (Agway) tendered for filing a Notice of Cancellation of its market-based authority. Agway has requested an effective date of December 15, 2003.

Comment Date: January 2, 2004.

16. Agway Energy Services—PA, Inc.

[Docket No. ER04–284–000]

Take notice that on December 12, 2003, Agway Energy Services—PA, Inc. (Agway) tendered for filing a Notice of Cancellation of its market-based authority. Agway has requested an effective date of December 15, 2003.

Comment Date: January 2, 2003.

17. Southern California Edison Company

[Docket No. ER04–285–000]

Take notice that on December 12, 2003, Southern California Edison Company (SCE) tendered for filing revised rate sheets (Revised Sheets) to the Interconnection Facilities Agreement (Interconnection Agreement) between the City of Industry, California (Industry) and SCE, Service Agreement No. 49 under SCE's Wholesale Distribution Access Tariff, FERC Electric Tariff First Revised Volume No. 5. SCE states that the purpose of the Revised Sheets is to reflect, among other things, the terms and conditions associated with the additional facilities required to provide 7.2 MW of Distribution Service to Industry for its Wholesale Distribution Load at the East Business Center.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Industry.

Comment Date: January 2, 2004.

18. California Independent System Operator Corporation

[Docket No. ER04–286–000]

Take notice that, on December 12, 2003, the California Independent System Operator Corporation (ISO) submitted an informational filing in accordance with Article IX, section B of the Stipulation and Agreement approved by the Commission on May 28, 1999, California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999) (Stipulation and Agreement). The ISO states that this provision requires the ISO to provide on a confidential basis to the Commission: (i) Information regarding any notice from an RMR Unit requesting a change of Condition; (ii) the date the chosen Condition will begin; and (iii) if the change is from Condition 2, the applicable level of Fixed Option Payment. The ISO states it has provided notice of the changes of condition described in the informational filing (subject to the applicable Non-Disclosure and Confidentiality Agreement in the RMR Contract) to the designated RMR contact persons at the California Agencies, the applicable Responsible Utilities, and the relevant RMR Owners.

Comment Date: January 2, 2004.

19. PacifiCorp

[Docket No. ER04–287–000]

Take notice that on December 12, 2003, pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and part 35 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35, PacifiCorp tendered for filing the following jurisdictional agreements:

1. Generation Interconnection Agreement dated December 14, 2001, between PacifiCorp and FPL Energy Vansycle, L.L.C. (Interconnection Agreement); and

2. Letter Agreement dated January 22, 2001, between PacifiCorp and FPL Energy Vansycle, L.L.C. and related invoice dated December 10, 2001 (collectively, the Letter Agreement).

PacifiCorp states that the Interconnection Agreement and Letter Agreement are being filed as service agreements under PacifiCorp's Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 11), and are designated as Service Agreement Nos. 276 and 277, respectively.

Comment Date: January 2, 2004.

20. The Cincinnati Gas & Electric Company

[Docket No. ER04–288–000]

Take notice that on December 15, 2003, The Cincinnati Gas & Electric Company (CG&E) filed a short-form market-based rate tariff. CG&E requests waiver of the Commission's prior notice requirements to allow the proposed tariff to become effective on or before January 31, 2004.

Comment Date: January 5, 2004.

21. DJGW, LLC

[Docket No. ER04–289–000]

Take notice that on December 15, 2003, DJGW, LLC (DJGW) tendered for filing a Petition for Acceptance of Initial Rate Schedule, Rate Schedule FERC No. 1; the grant of certain blanket approvals; and the waiver of certain Commission regulations.

Comment Date: January 5, 2004.

22. Meyersdale Windpower LLC

[Docket No. ER04–290–000]

Take notice that on December 15, 2003, Meyersdale Windpower LLC tendered for filing an application for authorization to sell energy and capacity at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: January 5, 2004.

23. Northeast Utilities Service Company, Holyoke Water Power Company, and Holyoke Power and Electric Company

[Docket No. ER04–291–000]

Take notice that on December 15, 2003, Northeast Utilities Service Company (NUSCO) on behalf of its affiliates, Holyoke Water Power Company (HWP) and Holyoke Power and Electric Company (HP&E), tendered for filing: (1) A revised rate schedule sheet extending the term of an agreement between HWP and HP&E for the sale of HWP's power output from Mt. Tom power plant; and (2) a revised rate schedule sheet extending the term of an agreement between HP&E and Select Energy, Inc. for the sale of HP&E's power entitlement to the output of Mt. Tom. NUSCO requests an effective date of December 31, 2003, or such other earliest date as permitted by the Commission.

NUSCO states that a copy of this filing was mailed to Holyoke Water Power Company, Holyoke Power and Electric Company and Select Energy, Inc.

Comment Date: January 5, 2004.

24. Bravo Energy Resources, LLC.

[Docket No. ER04–292–000]

Take notice that on December 15, 2003, Bravo Energy Resources, LLC

(Bravo) petitioned the Commission for acceptance of Bravo Rate Schedule FERC Electric Tariff Original Volume No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Bravo states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Bravo is not in the business of generating or transmitting electric power.

Comment Date: January 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 filed 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. E3–00665 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–091, et al.]

San Diego Gas & Electric Company, et al.; Electric Rate and Corporate Filings

December 22, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange; Investigation of Practices of the California Independent System Operator and the California Power Exchange

[Docket Nos. EL00–95–091 and EL00–98–078]

Take notice that on December 15, 2003, the California Independent System Operator Corporation (ISO) submitted a filing to comply with the order issued in the captioned proceedings on November 14, 2003, 105 FERC ¶ 61,196. The ISO states that the compliance filing has been served on all parties to these proceedings.

Comment Date: January 14, 2004.

2. Pacific Northwest Generating Cooperative

[Docket No. ER97–504–009]

Take notice that on December 15, 2003, Pacific Northwest Generating Cooperative (PNGC) tendered for filing with the Federal Energy Regulatory Commission its updated market analysis and report on changes in status in accordance with the Commission's Order in Docket No. ER97–504–000, which authorized PNGC to sell power at market-based rates. PNGC states that it also seeks to implement the Commission's new Market Behavior Rules as part of its market-based rate authority, and reports that it does not provide information to publishers of price indices.

Comment Date: January 5, 2004.

3. Capital Center Generating Company, L.L.C.

[Docket No. ER99–3207–001]

Take notice that on December 15, 2003, Capital Center Generating Company, L.L.C., filed with the Federal Energy Regulatory Commission a notice of change in status in connection with the transfer by EI Providence LLC and ProvEnergy Power Company LLC of their respective membership interests in Capital Center Energy Company, LLC (the parent company of Capital Center Generating Company, L.L.C.) to Francis Street Energy, LLC.

Comment Date: January 5, 2004.

4. Garnet Energy LLC

[Docket No. ER02–1119–000, 001 and 002]

Take notice that on December 4, 2003, Garnet Energy LLC tendered for filing a Notice of Withdrawal of its application for limited market-based rate authority, pursuant to Rule 216 of the Commission's regulations, 18 CFR 385.216.

Comment Date: December 29, 2003.

5. Cross-Sound Cable Company, LLC

[Docket No. ER03–600–001]

Take notice that on December 15, 2003, Cross-Sound Cable Company, LLC (CSC LLC) filed revised procedures for customers to reassign their firm transmission rights over the Cross Sound Cable (CSC). CSC LLC states that the revised procedures are intended to replace the procedures filed on March 3, 2003 in this docket and would supercede the procedures for the reassignment of CSC transmission rights filed in Docket No. ER00–1–002 on July 3, 2000 in compliance with the Commission's June 1, 2000 Order, 91 FERC ¶ 61,230, approving negotiated rates for transmission service over the CSC. CSC LLC requests that the Commission allow the new reassignment procedures to become effective December 15, 2003.

CSC LLC states that a copy of this filing has been mailed to each person designated on the official service list compiled by the Secretary of the Commission in Docket No. ER03–600–000.

Comment Date: January 5, 2004.

6. New York Independent System Operator, Inc.

[Docket No. ER04–294–000]

Take notice that on December 12, 2003, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff). NYISO states that the proposed filing would reduce the magnitude of congestion rent shortfalls. The NYISO has requested an effective date of February 2, 2004.

The NYISO states that it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission

Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 2, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00666 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–23–000, et al.]

Sweetwater Wind Power L.L.C., et al.; Electric Rate and Corporate Filings

December 23, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Sweetwater Wind Power L.L.C.

[Docket No. EG04–23–000]

On December 16, 2003, Sweetwater Wind Power L.L.C. (SWWP), a Texas limited liability company with its principal place of business in Houston, Texas, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

SWWP states it intends to construct, own and operate a 37.5-MW wind powered generation facility located near Sweetwater, Nolan County, Texas (the Facility). SWWP further states that when completed, the electric energy produced by the Facility will be sold into the wholesale power market of the Electric Reliability Council of Texas and the Facility is expected to begin commercial operation by December 31, 2003.

Comment Date: January 6, 2004.

2. Tenaska Power Services Co., Complainant, v. The Midwest Independent Transmission System Operator, Inc., Respondent

[Docket No. EL04–43–000]

Take notice that on December 23, 2003, Tenaska Power Services Co. (TPS) submitted a complaint against the Midwest Independent Transmission System Operator, Inc. (MISO) requesting fast track processing by the Commission. TPS alleges that MISO has violated its OATT and Commission precedent and policy by improperly processing rollover requests out of the proper order. TPS states that a copy of the complaint was served on MISO and on Cargill Power Markets, LLC on December 23, 2003, via facsimile.

Comment Date: January 12, 2004.

3. Southern California Edison Company, on Behalf of Mountainview Power Company, LLC

[Docket No. ER04–316–000]

Take notice that on December 19, 2003, Southern California Edison Company (SCE), on behalf of Mountainview Power Company, LLC (MVL) (together, Applicants) filed a Power Purchase Agreement (PPA) between MVL and SCE. Applicants seek approval of the PPA no later than February 23, 2004.

Comment Date: January 9, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, 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. E3–00664 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10395–025]

City of Augusta, Kentucky, and its Electric Plant Board; Notice of Availability of Environmental Assessment

December 24, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects' staff has prepared an Environmental Assessment (EA) for an application for amendment of license requesting Commission approval to permit the City of Augusta, Kentucky and its Electric Plant Board (licensee) to change the project design and transmission line route of the Meldahl Hydroelectric Project. The Meldahl Hydroelectric Project is located at the Corps' Captain Anthony Meldahl Locks and Dam on the Ohio River in Bracken County, Kentucky.

The EA contains the staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, call please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY (202) 502–8659.

For further information, contact Erich Gaedeke at (202) 502–8777.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00670 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF03–8–000]

Transwestern Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for Transwestern's Proposed San Juan 2005 Expansion Project and Request for Comments on Environmental Issues

December 24, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Transwestern Pipeline Company's (Transwestern) proposed San Juan 2005 Expansion Project in New Mexico. This notice announces the opening of the scoping process we [1] will use to gather input from the public and interested agencies on the project. Your input will help us determine which issues need to be evaluated in the EA. The Commission will use the EA in its decision-making process to determine whether or not to authorize the project. Please note that the scoping period will close on January 26, 2004.

The San Juan 2005 Expansion Project is in the preliminary design stage. At this time no formal application has been filed with the FERC. For this project, the FERC staff is initiating its National Environmental Policy Act (NEPA) review prior to receiving the application. The purpose of the NEPA Pre-filing Process is to involve interested stakeholders early in project planning and to identify and resolve issues before an application is filed with the FERC. A docket number (PF03–8–000) has been established to place information filed by Transwestern and related documents issued by the Commission, into the public record.[2] Once a formal application is filed with the FERC, a new docket number will be established.

On November 3–6, 2003, the FERC staff held interagency meetings in Albuquerque, Bloomfield, and Gallup, New Mexico to discuss the project and the environmental review process with Transwestern and other key Federal, tribal, and state agencies. These agencies included: Navajo Nation Environmental Protection Agency, Navajo Nation Department of Fish and Wildlife, Navajo Nation Historic Preservation Office, U.S. Bureau of Land Management; Bureau of Indian Affairs, State of New Mexico Environment Department, and the New Mexico State Lands Office. Currently, all agencies above have expressed their intention to participate as cooperating agencies in the preparation of the EA.

This notice is being sent to landowners; Federal, state, Navajo Nation, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Some affected landowners may be contacted by a project representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. If they are, the company would seek to negotiate a mutually acceptable agreement. However, in the event that the project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the pipeline. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with state law.

Summary of the Proposed Project

Transwestern proposes to expand its natural gas system by the construction of approximately 72.6 miles of pipeline loop [3] (the San Juan Lateral Loop) and modifying facilities at seven existing compressor stations in New Mexico. More specifically, Transwestern requests Commission authorization to:

- Construct and operate approximately 63.2 miles of 36-inch diameter pipeline loop starting at approximate milepost (MP) 8.7 on the existing Transwestern San Juan Lateral, in San Juan County, New Mexico, extending south-southwest to the existing mainline valve (MLV) south of Navajo Highway 9 at about MP 71.9;
- Construct and operate an additional approximately 9.4 miles of 36-inch diameter pipeline loop starting at the existing MLV just south of Pinedale Road in McKinley County, New Mexico (about MP 87.7), and extending south-southwest to terminate at the existing Transwestern Gallup Compressor Station in McKinley County, New Mexico. The Gallup Compressor Station is located at approximate MP 97.1 of the existing San Juan Lateral;
- Bloomfield Compressor Station—Install and operate one, new 15,000 horsepower (HP) electric-drive compressor unit and associated facilities at its existing station, located in San Juan County, New Mexico;
- Bisti Compressor Station—Remove an existing 10,000 HP electric-drive compressor unit and replace it with a new 15,000 HP electric drive compressor unit (de-rated to run at 12,000 HP) at its existing station, located in San Juan County, New Mexico;
- Gallup Compressor Station—Remove an existing compressor unit (compressor only, not the motor) and replace it with a new compressor unit at its existing station in McKinley County, New Mexico;
- Compressor Station 5—Rewheel an existing compressor unit and modify station piping at its existing station located near Thoreau, McKinley County, New Mexico;
- Compressor Station 6—Install cylinder unloaders on an existing compressor unit at its existing station located near Laguna, Cibola County, New Mexico;
- Compressor Station 7—Rewheel an existing compressor unit at its existing station located near Mountainair, Torrance County, New Mexico;
- Compressor Station 9—Rewheel an existing compressor unit and install a new gas scrubber and associated station piping at its existing station located near Roswell, Chaves County, New Mexico;
- Install side valves at new tie-in locations and MLVs at various locations

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staffs of the FERC's Office of Energy Projects.

[2] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

[3] A pipeline ''loop'' is a segment of pipe installed adjacent to an existing pipeline and connected to the existing pipeline at both ends. A loop increases the amount of gas that can move through that portion of the system.

as required by U.S. Department of Transportation regulations.

A map depicting the proposed pipeline route and compressor stations is provided in appendix 1.[4]

Transwestern proposes to place the project in service by June 2005. To achieve this in-service date, Transwestern intends to request approval to begin construction of the pipeline facilities in July 2004.

Land Requirements

Construction of the proposed facilities would require about 1,082.1 acres of land. The construction right-of-way width for the pipeline would be 110 feet, and would be adjacent to existing rights-of-way for its entire length (25 feet overlap of the existing right-of-way and 85 feet new construction right-of-way). Transwestern would maintain approximately 220.1 acres of new permanent right-of-way (50 feet of permanent easement, of which 25 feet would be overlap of the existing right-of-way) for pipeline operation and maintenance following construction.

The EA Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address issues and concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues and reasonable alternatives. By this notice, we are requesting agency and public comments on the scope of the issues to be analyzed and presented in the EA. All scoping comments received will be considered during the preparation of the EA. To ensure your comments are considered, please carefully follow the instructions in the public participation section of this notice. The FERC will be the lead Federal agency in the preparation of the EA. The document will satisfy the requirements of NEPA.

Our independent analysis of the issues will be included in an EA. The EA will be mailed to Federal, Navajo Nation, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the Commission's official service list for this proceeding. A 30-day comment period will be allotted for review of the EA. We will consider all comments on the EA and revise the document, before we make our recommendations to the Commission.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, reasonable alternatives routes to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. To ensure that your comments are timely and properly recorded, please mail your comments so that they will be received in Washington, DC on or before January 19, 2004, and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of Gas Branch 2; and
- Reference Docket No. PF03–8–000 on the original and both copies.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. Therefore, the Commission encourages electronic filing of comments.

See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an free account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCONLINESUPPORT@FERC.GOV*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Finally, Transwestern has established an Internet Web site for this project at *http://www.crosscountryenergy.com/about/tw.shtml*. The Web site includes helpful information about the project.

Linda Mitry,

Acting Secretary.

Appendix—Information Request

Please keep my name on the mailing list for the San Juan 2005 Expansion Project

Name_____

Agency_____

Address_____

City_____ State____ Zip Code____

[ ] Please provide detailed maps for the facilities closest to the following area(s):

[ ] My mailing address.

[ ] My property.

(Requests for more than a single map location may be expedited by asking the company directly.)

(Be as specific as you can about the location(s) of your area(s) of interest. Please include any information that would help us accurately locate these area(s). For example: county, town, cross-streets, or landmarks.

[FR Doc. E3–00675 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

[4] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch at 202.502.8371. For instructions on connecting to eLibrary, refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

December 24, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2107–016.

c. *Date Filed:* December 16, 2003.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Poe Project.

f. *Location:* On the North Fork Feather River in Butte County, near Pulga, California. The project includes 144 acres of lands of the Plumas National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Tom Jereb, Project Manager, Pacific Gas and Electric Company, P.O. Box 770000, N11D, San Francisco, California 94177, (415) 973–9320.

i. *FERC Contact:* John Mudre, (202) 502–8902 or *john.mudre@ferc.gov*.

j. *Cooperating agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status February 17, 2004.

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 resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status 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.

m. This application is not ready for environmental analysis at this time.

n. The project consists of: (1) The 400-foot-long, 60-foot-tall Poe Diversion Dam, including four 50-foot-wide by 41-foot-high radial flood gates, a 20-foot-wide by 7-foot-high small radial gate, and a small skimmer gate that is no longer used; (2) the 53-acre Poe Reservoir; (3) a concrete intake structure located on the shore of Poe Reservoir; (4) a pressure tunnel about 19 feet in diameter with a total length of about 33,000 feet; (5) a differential surge chamber located near the downstream end of the tunnel; (6) a steel underground penstock about 1,000 feet in length and about 14 feet in diameter; (7) a reinforced concrete powerhouse, 175-feet-long by 114-feet-wide, with two vertical-shaft Francis-type turbines rated at 76,000 horsepower connected to vertical-shaft synchronous generators rated at 79,350 kVA with a total installed capacity of 143 MW and an average annual generation of 584 gigawatt hours; (8) the 370-foot-long, 61-foot tall, concrete gravity Big Bend Dam; (9) the 42-acre Poe Afterbay Reservoir; and (10) appurtenant facilities.

o. 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.

p. With this notice, we are initiating consultation with the California State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance/Deficiency Letter: January 2004.
Additional Study Requests, if needed: February 2004.
Scoping Meetings: May 2004.
Request Additional Information: June 2004.
Notice of application is ready for environmental analysis: October 2004.
Notice of the availability of the draft EIS: May 2005.
Notice of the availability of the final EIS: October 2005.
Ready for Commission's decision on the application: December 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00672 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

December 24, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of license.

b. *Project No:* 2306–029.

c. *Date Filed:* December 11, 2003.

d. *Applicants:* Citizens Communications Company (Transferor), Great Bay Hydro Corporation (Transferee) and Vermont Electric Cooperative, Inc. (Alternate Transferee/Transferor).

e. *Name and Location of Project:* The Clyde River Hydroelectric Project is on the Clyde River in Orleans County,

Vermont. The project does not occupy Federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For Transferor: William J. Madden, Jr., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502, (202) 371–5715. For Transferee: Anthony M. Callendrello, Great Bay Hydro Corporation, 1 New Hampshire Ave., Suite 125, Portsmouth, NH 03801, (603) 776–4990. For Alternate Transferee/Transferor: Kelly Enright, Vermont Electric Cooperative, Inc., 182 School Street, Johnson, VT 05656, (802) 635–2331.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for Filing Comments, Protests, and Motions To Intervene:* January 20, 2004.

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. 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. Please include the project number (P–2306–029) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing a document 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 documents on that resource agency.

j. *Description of Application:* The Applicants request Commission approval to transfer the project license from the Transferor to the Transferee, Great Bay Hydro Corporation, in connection with the proposed sale of the project. This transaction would take place either directly or via transfer of the license and the project first to the Alternate, Vermont Electric Cooperative, Inc., which would then transfer the license and project to the Transferee.

k. 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 ''FERRIS'' link. Enter the project number excluding the last three digits (P–2306) 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 addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00673 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 362–004]

Ford Motor Company; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

December 24 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New major license.

b. *Project No.:* 362–004.

c. *Date Filed:* June 1, 2001.

d. *Applicant:* Ford Motor Company.

e. *Name of Project:* Ford Hydroelectric Project.

f. *Location:* On the Mississippi River, in the city of St. Paul, Ramsey County, Minnesota, at the U.S. Army Corps of Engineers' Lock and Dam No. 1. The project is partially located on Federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* George Waldow, HDR Engineering, Inc., 6190 Golden Hills Drive, Minneapolis, Minnesota 55416, or telephone (763) 591–5485.

i. *FERC Contact:* Sergiu Serban, e-mail address *sergiu.serban@ferc.gov*, or telephone (202) 502–6211.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice. Reply comments are due 105 days from the issuance 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 resource 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. 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 has been accepted, and is ready for environmental analysis at this time.

l. *Description of the Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Lock and Dam No. 1 and would consist of the following facilities: (1) An existing powerhouse integral with the dam having a total installed capacity of 18,000 kilowatts; and (2) appurtenant facilities. The average annual generation is estimated to be 97 gigawatthours.

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.

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.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule and Final Amendments:* The application will be processed according to the following Hydro Licensing Schedule. To expedite the schedule, we will forgo the draft EA and prepare a final EA. However, we'll reconsider preparation of a draft EA if warranted by the complexity and controversy of the comments filed in response to this notice. Revisions to the schedule will be made as appropriate.

Notice of application ready for environmental analysis: December 2003.
Notice of the availability of the final EA: July 2004.
Ready for Commission's decision on the application: September 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00674 Filed 12–31–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6647–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–FRC–H03000–00 Rating EC2, Cheyenne Plains Pipeline Project, Natural Gas Transmission Pipeline, Construction and Operation, NPDES Permit and U.S. Army COE Section 404 Permit Issuance, several counties, CO and several counties, KS.

Summary: EPA requested additional information regarding impacts to wetlands and recommended that the Final EIS include a Clean Water Act section 404(b)(1) Guidelines evaluation. EPA also requested information regarding the potential for Prevention of Significant Deterioration (PSD) increment constraints at the Cheyenne Hub.

ERP No. D–IBR–K39081–CA Rating EC2, Freeport Regional Water Project, To Construct and Operate a Water Supply Project to Meet Regional Water Supply Needs, Sacramento County Water Agency (SCWA) and the East Bay Municipal Utility District (EBMUD), Alameda, Contra Costa, San Joaquin, Sacramento Counties, CA.

Summary: EPA expressed concerns regarding potential cumulative impacts to habitat, water quality, and water supply reliability. EPA requested additional information regarding groundwater management, assurance for protection of species of concern, and compliance with section 404 of the Clean Water Act.

ERP No. D–NOA–D91000–00 Rating EC2, Framework Adjustment 4 to the Atlantic Mackerel, Squid, and Bullfish Fishery Management Plan, To Extend the Moratorium to the Illex Fishery, Mid-Atlantic Fishery Management Council.

Summary: EPA requests further information and clarification on the proposed actions and the alternatives considered. EPA also requested that the impacts to Essential Fish Habitat and the cumulative impacts associated with the fishery be assessed.

Final EISs

ERP No. F–DOE–K08024–CA, Sacramento Area Voltage Support Project, System Reliability and Voltage Support Improvements, Sierra Nevada Region, Alameda, Contra Costa, Placer, Sacramento, San Joaquin and Sutter Counties, CA.

Summary: The final EIS is responsive to many issues raised by EPA regarding the draft EIS. EPA recommends that the Record of Decision fully describe the basis for the selection of the Preferred Alternative and that continued attention be paid to activities in the project area's mitigation measures for potential cumulative impact can be identified.

ERP No. F–FHW–D40392–PA, Central Susquehanna Valley Transportation Project, Improve Transportation, PA 0015 Section 088, Funding and COE Section 404 Permit, Snyder, Northumberland and Union Counties, PA.

Summary: EPA is concerned with further reducing the amount of waste material generated by the preferred alternative and with the placement of the waste material to avoid any secondary environmental impacts. EPA recommends further coordination with resource agencies on the placement of stormwater management facilities, temporary access roads and staging areas during construction to avoid additional impacts.

ERP No. F–FTA–J40159–CO, West Corridor Project, Transportation Improvements in the Cities of Denver, Lakewood and Golden, Light Rail Transit (LRT), Jefferson County, CO.

Summary: No formal comment letter was sent to the preparing agency.

Dated: December 29, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–32312 Filed 12–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6646–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa*, Weekly receipt of Environmental Impact Statements Filed December 22, 2003 Through December 24, 2003 Pursuant to 40 CFR 1506.9.

EIS No. 030576, Draft EIS, FHW, ND, United States Highway 2 (U.S. 2) Project, Improves from the Junction of U.S. 85 (milepost 31.93) to West of U.S. 52 (milepost 131.24), Funding, NPDES and U.S. Army COE Section 404 Permits, Williams, Mountrail and Ward Counties, ND, Comment Period Ends: February 6, 2004, Contact: Mark Schrader (701) 250–4343, Ext. 111.

The above FHW EIS should have appeared in the 12/24/2003 **Federal Register**. The 45-day Comment Period is Calculated from 12/24/2003.

EIS No. 030577, Regulatory Final EIS, FRA, Interim Final Rule for the Use of Locomotive Horns at Highway-Rail Grade Crossings in the United States, Wait Period Ends: January 22, 2004, Contact: David Valenstein (202) 493–6368.

This document is available on the Internet at: *http://www.fra.dot.gov.*

The above FRA EIS should have appeared in the 12–24–2003 **Federal Register**. The 30-day Wait Period is Calculated from 12/24/2003.

EIS No. 030578, Draft EIS, IBW, TX, NM, Rio Grande Canalization Project (RGCP), Long-Term River Management Alternatives Practices, Implementation, Extends from below Percha Dam in Sierra County, NM to American Dam in El Paso, TX, Comment Period Ends: February 10, 2004, Contact: Douglas Echlin (915) 832–4741.

This document is available on the Internet at: *http://www.ibwc.state.gov.*

The above IBW EIS should have appeared in the 12–24–2003 **Federal Register**. The 45-day Comment Period is Calculated from 12–24–2003.

EIS No. 030579, Final EIS, NPS, OH, Cuyahoga Valley National Park Rural Landscape Management Program, Rural Landscape Resources Preservation and Protection, Cuyahoga River, Cuyahoga and Summit Counties, OH, Wait Period Ends: January 22, 2004, Contact: John P. Debo, Jr. (440) 546–5903.

The above NPS EIS should have appeared in the 12–24–2003 **Federal Register**. The 30-day Wait Period is Calculated from 12–24–2003.

EIS No. 030580, Draft EIS, NPS, NY, Saratoga National Historical Park General Management Plan, Implementation, Hudson River Valley, Towns of Stillwater and Saratoga, Saratoga County, NY, Comment Period Ends: March 1, 2004, Contact: Doug Lindsay (518) 664–9821.

EIS No. 030581, Draft Supplement, COE, PR, Port of the Americas Project, Additional Information on the Development of a Deep-Draft Terminal at the Port of Ponce to Receive Post-Panamax Ships, COE Section 10 and 404 Permits, Municipalities of Guyanilla-Penuelas and Ponce, Puerto Rico, Comment Period Ends: February 17, 2004, Contact: Edwin E. Muniz (787) 729–6905.

EIS No. 030582, Draft EIS, AFS, WY, ID, High Mountains Heli-Skiing (HMH) Project, Issuance of a New 5-Year Special Use Permit (SUP) to Continue Operating a Guided Helicopter Skiing, in Portions of the Bridger-Teton National Forest and Caribou-Targhee National Forest (CTNF), Teton and Lincoln Counties, WY and Teton and Bonneville Counties, ID, Comment Period Ends: February 17, 2004, Contact: Ray Spencer (307) 739–5400.

EIS No. 030583, Final EIS, COE, FL, Broward County Shore Protection Project, Fill Placement in Segment II (Hillsboro Inlet to Port Everglades) and Segment III (Port Everglades to the south County Line), Broward County, FL, Wait Period Ends: February 2, 2004, Contact: Ms. Terri Jordan (904) 232–1817.

EIS No. 030584, Final EIS, NOA, WA, CA, OR, U.S. West Coast Fisheries for Highly Migratory Species Fishery Management Plan (FMP), Approval and Implementation, Ocean Waters off the States of Washington, Oregon and California a portion of the Exclusive Economic Zone (EEZ), WA, OR and CA, Wait Period Ends: February 2, 2004, Contact: Rod McInnis (562) 980–4000.

EIS No. 030585, Final EIS, AFS, CA, Emigrant Wilderness Dams Project, Reconstruct, Repair, Maintain and Operate 12 Dams; Snow, Bigelow, Huckleberry, Emigrant Meadow, Middle Emigrant, Emigrant, Leighton, Long, Lower Buck, Y-Meadow and Bear, Stanislaus National Forest, Summer Ranger District, Tuolumne County, CA, Wait Period Ends: February 2, 2004, Contact: John J. Maschi (209) 532–3671 Ext. 317.

This document is available on the Internet at: *http://www.fs.fed.us.r5/stanislaus/projects/emigrant.*

EIS No. 030586, Draft EIS, UAF, HI, Johnston Atoll Airfield (Installation), Termination of the Air Force Mission, Johnston Atoll, Implementation, Honolulu, HI, Comment Period Ends: February 17, 2004, Contact: Patricia J. Vokoun (703) 604–5263.

EIS No. 030587, Draft EIS, FHW, WA, OR, WA–35 Columbia River Crossing, Proposal to build a New Bridge across the Columbia River between Hood River, Hood River, OR and White Salmon, WA, Comment Period Ends: February 17, 2004, Contact: Michael Kulbacki (360) 753–9556.

EIS No. 030588, Draft EIS, BLM, Programmatic EIS—Proposed Revision to Grazing Regulations for the Public Lands, 42 CFR Part 4100, In the Western Portion of the United States, Comment Period Ends: March 2, 2004, Contact: Molly S. Brady (202) 452–7714.

This document is available on the Internet at: *http://www.blm.gov/grazing.*

EIS No. 030589, Final EIS, FHW, MN, Trunk Highway 371 Corridor Reconstruction, U.S. Truck Highway 10 to County State Aid Highway (CSAH) Highway 48, Funding, Morrison County, MN, Wait Period Ends: February 2, 2004, Contact: Cheryl Martin (651) 291–6120.

EIS No. 030590, Final EIS, COE, NJ, Union Beach Community Project, Provision of Hurricane and Storm Damage Reduction to Residential, Commercial and Recreational Resources, Located along the Raritan Bay and Sandy Hook Bay Shoreline, Monmouth County, NJ, Wait Period Ends: February 2, 2004, Contact: Mark H. Burlas (212) 264–4663.

Dated: December 29, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 03–32313 Filed 12–31–03; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank) provides working capital guarantees to lenders. In assessing the creditworthiness of an

applicant Ex-Im Bank reviews EIB Form 84–1. This form provides information which allows the Bank to obtain legislatively required reasonable assistance of repayment, as well as fulfill other statutory requirements. The form has had no change in content or purpose; it requires only a three-year extension.

DATES: Written comments should be received on or before March 2, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments or requests for additional information to Letitia Kress, Export-Import Bank of the United States, Room 1125, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3613.

FOR FURTHER INFORMATION CONTACT: Solomon Bush (202) 565–3353.

SUPPLEMENTARY INFORMATION:

Title: U.S. Small Business Administration, Export-Import Bank of the United States, Joint Application for Working Capital Guarantee.

OMB Number: 3048–0003.

Form Number: EIB–SBA 84–1 (Rev. 8/2000).

Burden Statement

Type of Request: Extension of expiration date.

Annual Number of Respondents: 500.

Estimated Time per Respondent: 2 hours.

Annual Burden Hours: 1,000.

Frequency of Reporting or Use: Upon application for guarantees on working capital loans advanced by the lenders to U.S. exporters.

Dated: December 23, 2003.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

OMB No.: 3048-0003
Expires February 29, 2004

(SBA Use Only) Date Received C.I.D. No. ☐ Intermediary	U.S. SMALL BUSINESS ADMINISTRATION EXPORT-IMPORT BANK OF THE UNITED STATES JOINT APPLICATION FOR WORKING CAPITAL GUARANTEE	(Ex-Im Bank Use Only) Date Received

PART A. PRINCIPAL PARTIES

1. Borrower/Exporter Please circle the appropriate answer: New to Ex-Im Bank or SBA? Yes No

Company Name	D&B No.		Telephone No.
Name and Title of Contact Person	Federal ID No.		Fax No.
Address	City	State	Zip

Gross Sales $	No. of Full-Time Employees	Primary SIC Code **OR** North American Industrial Classification System No. (NAIC)	Products/Goods/Services to be exported (Description)
	Small Business as stipulated by SBA Guidelines? Yes No	*Minority-Owned? Yes No *Women-Owned? Yes No	

Management (Proprietors, partners, officers, directors and holders of outstanding stock -100% of ownership must be shown).
(Attach separate sheet of paper if necessary.)

Name and Social Security Number	Complete Address	% owned	*Military Service From: To:	*Race **	*Sex

*This information is collected for statistical purposes only. It has no bearing on the credit decision to approve or decline this application.
**Please use one of the following categories: 1) American Indian/Alaska Native; 2) Black/African American; 3) Asian; 4) Native Hawaiian/Pacific Islander ; 5) White; 6) Ethnicity Hispanic; 7) Not Hispanic.

Affiliate(s) (If more than one, please attach list on separate sheet of paper.)

Company Name	D&B No.	Telephone No.	
Name and Title of Contact Person	Federal ID No.	Fax No.	
Address	City	State	Zip

2. Personal Guarantor(s) (If more than one guarantor, please attach separate sheet of paper.)

Name	SSN	Telephone No. Fax No.	
Address	City	State	Zip

3. Lender Please circle the appropriate answer: New to Ex-Im Bank or SBA? Yes (If yes, submit annual report.) No

Name	Federal ID No.	Telephone No. Fax No.	
Address	City	State	Zip

OMB No.: 3048-0003
Expires February 29, 2004

PART B. INFORMATION ABOUT THE TRANSACTION

Loan Amount $	Terms and Fees ☐ 6 months ☐ 1 year ☐ Other (Specify)	Type (check one) ☐ Revolving ☐ Transaction(s) Specific
Interest Rate to be Charged Lender Interest Rate _____% Per Annum	Other Fees or Charges (type and amount)	Renewal? ☐ Yes ☐ No
If Interest Rate is to be Variable: Base Rate _____ Adjustment Period _____ (Monthly, Quarterly, Annually, etc.) Spread _____ Base Rate Source _____ (WSJ, LIBOR, etc.)		Conversion of Preliminary Commitment? ☐ Yes If yes, # _____ ☐ No

Were you assisted by an Ex-Im Bank City/State partner or a Small Business Development Center?	Yes	No	If yes, please identify: Name & Address Contact Name _____ Telephone No. _____
Estimated Total Export Sales to be supported by this Loan $ _____			
Principal Countries of Export: (Please identify the top 3 countries.)			
U.S. Content _____% (Ex-Im Bank applicants only)			
Please estimate the number of jobs to be supported by this Loan:	_____ Maintained jobs _____ Additional jobs created		
Are Performance Guarantees or Standby Letters of Credit to be issued under this Loan?	Yes	No	Percentage of Loan to be utilized for performance guarantees _____%
Please answer the following questions with regard to the "export items" to be exported from the U.S.			
Military Is the Buyer associated in any way with the military? Are the items to be used by the military, or are they defense articles, or have a military application?	Yes	No	If yes, please attach a description of the buyer or items, as applicable.
Nuclear Are the items to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities?	Yes	No	If yes, please attach a description of the items. (Ex-Im Bank applicants only)
Environmental Are the products to be used for an environmental project or have perceptible environmental benefits?	Yes	No	If yes, please attach a description of the items and answer the following: Identify the project: _____ Project Location: _____ Project Sector or Industry: _____ If not related to a specific project, the products are to be used to create an environmental benefit in: _____(Please identify Sector)
Are the items on the **U.S. Munitions Control List** (Part 121 of Title 22 of the Code of Federal Regulations), **OR** do they require a validated export license from the Bureau of Export Administration?	Yes	No	If yes, please attach a description of the items. If uncertain whether a validated export license is required, written verification from the appropriate licensing agency may be required before loan approval. (Ex-Im Bank applicants only)

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Expires February 29, 2004

PART C. CERTIFICATIONS

***Please attach a signed, duplicate original of Part C for each Borrower and each Guarantor**

1. Borrower/Exporter and Lender Certification

We certify and acknowledge that neither we or our Principals have within the past 3 years been a) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction; b) formally proposed for debarment, with a final determination still pending; c) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations; d) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Transaction despite an inability to make certifications a) through d) in this paragraph.

We further certify that we have not and will not knowingly enter into any agreements in connection with the goods and/or services covered by this policy with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the Government-wide Non-procurement Suspension and Debarment Regulations - Common Rule (Regulations).

In addition, we further certify that we have not, and will not, engage in any activity in connection with this transaction that is a violation of a) the Foreign Corrupt Practices Act of 1977, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), b) the Arms Export Control Act, 22 U.S.C. 2751 et seq., c) the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq., or d) the Export Administration Act of 1979, 50 U.S.C. 2401 et seq.; nor have we been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of our knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

We certify that the representations made and the facts stated in this application and its attachments are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts. We further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.)

Name of Borrower/Exporter	Date
Signature	
Name and Title (Print or Type)	

Name of Lender	Date
Signature	
Name and Title (Print or Type)	

2. Additional Borrower/Exporter Certification

Please circle the appropriate answer. Attach complete information for any "yes" circled.

a. Are there any pending or threatened liens, tax liens, judgments or material litigation against the:

Borrower YES NO **Guarantor** YES NO

b. Has the Borrower/Exporter or its owner*(s)*, or the Guarantor ever filed for protection under U.S. bankruptcy laws? Has either had an involuntary bankruptcy petition filed against it?

Borrower YES NO **Guarantor** YES NO

c. Has the Borrower/Exporter or its owner*(s)* or affiliates, or the Guarantor ever previously requested U.S. Government financing?

Borrower YES NO **Guarantor** YES NO

d. Is/has the Borrower or Guarantor: (a) presently under indictment, on parole or probation; or (b) ever been charged for any criminal offense; or (c) ever been convicted, placed on pretrial diversion, or placed on any form of probation including adjudication withheld pending probation for any criminal offense other than a minor vehicle violation?

Borrower YES NO **Guarantor** YES NO

f. Are all owners and guarantors U.S. Citizens? YES NO If no, give alien registration number: _____

We certify that the representations made and the facts stated in this application and its attachments are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts. We further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.)

(SBA APPLICANTS ONLY)

Name of Borrower/Exporter*	Date	Name of Guarantor*	Date
Signature		Signature	
Name and Title (Print or Type)		Name and Title (Print or Type)	

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3. Additional Lender Certification

The Lender further certifies to the best of his or her knowledge and belief, that if any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this commitment providing for the United States to guarantee a loan, the undersigned shall complete and submit a Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. If Standard Form-LLL is necessary, it may be obtained from Ex-Im Bank or SBA.

We further certify that none of the Lender's employees, officers, directors, or substantial stockholders (more than 10%) have a financial interest in the applicant.

We certify that the representations made and the facts stated in this application and its attachments are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts. We further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.)

Name of Lender	Date
Signature	
Name and Title (Print or Type)	

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APPLICATION INSTRUCTIONS

PART A. PRINCIPAL PARTIES

1. **Borrower/Exporter.** Complete this section with information on the individual or corporate borrower. Provide the preliminary SIC code **OR** North American Industrial Classification System No. (NAIC) of the borrower, rather than the product being exported.

Management. Complete this section for each proprietor, partner, officer or director owning 20% or more of the company.

2. **Personal Guarantor(s).** The personal guarantee of the owner(s) is required in most cases.

3. **Lender.** Leave blank if you are applying for a Preliminary Commitment and a prospective lender has not been identified.

PART B. INFORMATION ABOUT THE TRANSACTION
Provide the loan amount, term and type of loan requested, and answer all questions in Part B. (See also Checklist item 2 below.)

PART C. CERTIFICATIONS
This section must be signed by an authorized representative of the borrower and, if a request for a final commitment, an authorized representative of the lender.

CHECKLIST OF INFORMATION TO BE ATTACHED
(Note: All Attachments must be signed and dated by all person(s) signing this form.)

	Yes	N/A
BACKGROUND		
1. Brief resume of principals and key employees, History of business; copy of business plan, if available; identify whether sole proprietorship, general partnership, limited liability company (LLC), corporation and/or subchapter-S corporation.		
2. Explanation of use of proceeds and benefits of the loan guarantee, including details of the underlying transaction(s) for which the loan is needed, including country(s) where the buyers are located.		
TRANSACTION		
3. Attach product literature. If applicable, attach description of items if they are nuclear, military, environmental, on the U.S. Munitions Control List, or require an export license.		
4. Copy of letter of credit and/or copy of buyer's order/contract, if available.		
5. Export credit insurance-related material (policy, application, buyer credit limit), if applicable.		
6. Copy of export license, if required.		
FINANCIAL INFORMATION		
7. Business financial statements (Balance Sheet, Income Statement, statement of Cash Flows) for the last three (3) years, if applicable, supported by the most recent Federal income tax return for the business. SBA applicants must submit the last three (3) years of signed, Federal income tax returns for the business.		
8. Current financial statement (interim) dated within ninety (90) days of the date of application filing.		
9. Aging of accounts receivable and accounts payable.		
10. Schedule of all principal officer/owner's compensation for the past three (3) years and current year to date [if none, please indicate].		
11. Signed joint personal financial statements(s) of each major shareholder(s)/partner(s), owner(s), of the company (with 20% or greater ownership, including assets and liabilities of both spouses) and their most recent Federal income tax return; (not required for venture capital partners).		
12. Estimate of monthly cash flow for the term of the loan, highlighting the proposed export transaction.		
13. Description of type and value of proposed collateral to support the loan (company assets/export product, i.e., inventory, accounts receivable, other).		
14. If Lender, attach Credit memorandum. For SBA Applications, attach D&B Report and Personal Credit Reports on Principals and Guarantors.		
15.For **Ex-Im Bank Applications** only: Nonrefundable $500 application fee for a Preliminary Commitment or nonrefundable $100 application fee for a Final Commitment, whichever is applicable, by check or money order made out to the Ex-Im Bank.		
16. SBA Form 1261 (**SBA Applicants only**)		
17. Copy of IRS Form 4506 (original to be submitted to IRS by the Lender). (**SBA Applicants only**)		

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MAILING/FORWARDING INSTRUCTIONS

Please circle the appropriate answer.

1. If submitted by a Borrower/Exporter

   a. Is Borrower/Exporter's requested loan amount in Part B, $1,111,111 or less? YES NO

   b. Is Borrower/Exporter a small business, as defined by Title 13 CFR Part 121.601? YES NO

   If answer to *both* of the above is YES, send entire set of materials to the SBA Representative in the U.S. Export Assistance Center nearest you. Call (800) 827-5722 for the address.

   If answer to *both* of the above is NO, send entire set of materials to:

   Export-Import Bank of the U.S.
   Office of Credit Applications and Processing
   811 Vermont Avenue, NW
   Washington, DC 20571

2. If submitted by a Lender.

   a. **SBA Participating Lenders** must submit with this application a Lender's check equal to 0.25% of the guaranteed amount of the loan application with a maturity of twelve (12) months or less.

   b. Is Lender using its **Ex-Im Bank Delegated Authority**? YES NO

   If YES, send the application, the Loan Authorization Notice (two (2) originals), the appropriate facility fee, and the $100 application fee to the Ex-Im Bank address *above, **irrespective of the guarantee amount.***

NOTICE TO APPLICANT : The applicant is hereby notified that information requested by this application is done so under authority of the Export-Import Bank Act of 1945, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

The information provided will be held confidential subject to the Freedom of Information Act (5 USC 552) the Privacy Act of 1974 (5 USC 552a), and the Right to Financial Privacy Act of 1978 (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for a loan or loan guarantee, or concerning a previously approved loan or loan guarantee, to another Government authority as necessary to process, service or foreclose on a loan or loan guarantee, or collect on a defaulted loan or loan guarantee.

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

FOR SBA USE ONLY			
Loan Officer's Recommendations	☐ Approve ☐ Decline	State Reason(s)	
Signature	Title		Date
Other Recommendation if required	☐ Approve ☐ Decline	State Reason(s)	
Signature	Title		Date
THIS BLOCK TO BE COMPLETED BY SBA OFFICIAL TAKING FINAL ACTION			
☐ Approve ☐ Decline	State Reason(s)		
Signature	Title	Date	

[FR Doc. 03–32272 Filed 12–31–03; 8:45 am]
BILLING CODE 6690–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 2003–N–10]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) has submitted the information collection entitled ''Capital Requirements for the Federal Home Loan Banks'' to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on December 31, 2003.

DATES: Interested persons may submit comments on or before February 2, 2004.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503. For copies of the information collection or public comments, contact Mary Gottlieb, by e-mail at *gottliebm@fhfb.gov*, by facsimile at 202/408–2580, by telephone at 202/408–2826, or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Jonathon F. Curtis, Senior Financial Analyst, Regulations & Research Division, Office of Supervision, by e-mail at *curtisj@fhfb.gov*, by telephone at 202/408–2866, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 6 of the Federal Home Loan Bank Act (Bank Act) establishes the capital structure for the Federal Home Loan Banks (Banks) and requires the Finance Board to issue regulations prescribing uniform capital standards applicable to each Bank. 12 U.S.C. 1426. In compliance with the requirements of section 6, the Finance Board added parts 930, 931, 932 and 933 to its regulations to implement the statutory capital structure for the Banks. 12 CFR parts 930, 931, 932 and 933. Part 930 establishes definitions applicable to risk management and the capital regulations; part 931 concerns Bank capital stock; part 932 establishes Bank capital requirements; and part 933 sets forth the requirements for Bank capital structure plans. The implementing regulations also include conforming changes to parts 917, 925 and 956, which concern, respectively, the powers and responsibilities of Bank boards of directors and senior management, Bank members, and Bank investments. 12 CFR parts 917, 925 and 956.

The Banks use the information collection contained in the rules implementing section 6 of the Bank Act to determine the amount of capital stock a member must purchase to maintain membership in and to obtain services from a Bank. More specifically, sections 931.3 and 933.2(a) authorize a Bank to offer its members several options to satisfy a membership investment in capital stock and an activity-based stock purchase requirement. 12 CFR 931.3 and 933.2(a). The information collection is necessary to provide the Banks with the flexibility to meet the statutory and regulatory capital structure requirements while allowing Bank members to choose the option best suited to their business requirements.

The OMB number for the information collection is 3069–0059. The OMB clearance for the information collection expires on December 31, 2003. The likely respondents include Banks and Bank members.

B. Burden Estimate

While the number of member respondents has increased, the burden has decreased significantly because the Banks can access most of the data required by the information collection electronically from call reports the members already must file with their primary regulator. The estimate for the total annual hour burden for all member respondents is 35,100 hours. The estimate for the total annual cost burden is $1,508,598. These estimates are based on the following calculations:

The Finance Board estimates the total annual average number of activity-based stock purchase requirement member respondents at 5,500, with 4 responses per member. The estimate for the average hours per response is 0.65 hours. The estimate for the annual hour burden for activity-based stock purchase requirement member respondents is 14,300 hours (5,500 activity-based member respondents x 4 responses per member x 0.65 hours per response). The estimate for the annual cost burden is $614,614 (14,300 hours x $42.98 hourly rate).

The Finance Board estimates the total annual average number of membership investment in capital stock member respondents at 8,000, with 4 responses per member. The estimate for the average hours per response is 0.65 hours. The estimate for the annual hour burden for membership investment in capital stock member respondents is 20,800 hours (8,000 membership investment member respondents $\times$ 4 responses per member $\times$ 0.65 hours per response). The estimate for the annual cost burden is $893,984 (20,800 hours x $42.98 hourly rate).

C. Comment Request

In accordance with the requirements of 5 CFR § 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on September 22, 2003. *See* 68 FR 55056 (Sept. 22, 2003). The 60-day comment period closed on November 21, 2003. The Finance Board received no public comments.

Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

Dated: December 29, 2003.

By the Federal Housing Finance Board.

Donald Demitros,

Chief Information Officer.

[FR Doc. 03–32308 Filed 12–31–03; 8:45 am]
BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2003–N–11]

Notice of Annual Adjustment

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

Notice of annual adjustment of the cap on average total assets that defines community financial institutions under section 2(13)(B) of the Federal Home Loan Bank Act and § 900.1 of the

Federal Housing Finance Board's regulations;

Notice of annual adjustment of the limits on annual compensation for Federal home loan bank directors under section 7(i)(2)(B) of the Federal Home Loan Bank Act and § 918.3(a)(1) of the Federal Housing Finance Board's regulations;

Notice of annual adjustment of the maximum dollar limits on certain allocations by a bank of its annual required affordable housing program contributions under § 951.3(a)(1)(iii) and 951.3(a)(2) of the Federal Housing Finance Board's regulations.

SUMMARY: Notice is hereby given that the Federal Housing Finance Board (Finance Board) has adjusted the cap on average total assets that defines a ''Community Financial Institution'' (CFI) based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI-U), as published by the Department of Labor (DOL), pursuant to the requirements of the Federal Home Loan Bank Act (Bank Act) and the Finance Board's regulations. Notice is hereby given that the Finance Board has made similar adjustments to the limits on annual compensation for the Federal Home Loan Bank (Bank) directors, based on the CPI-U, as published by the DOL, pursuant to the requirements of the Bank Act and the Finance Board's regulations. In addition, notice is hereby given that the Finance Board has made similar adjustments to the maximum dollar limits on certain allocations by a Bank of its annual required Affordable Housing Program (AHP) contributions, pursuant to the requirements of the Finance Board's regulations.

FOR FURTHER INFORMATION CONTACT: Scott L. Smith, Associate Director, Regulations and Research, Office of Supervision, (202) 408–2991, or Mark Edward Stover, Regulations and Research, Office of Supervision, (202) 408–2828. Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 2(13)(B) of the Bank Act (12 U.S.C. 1422(13)(B)), and § 925.1 of the Finance Board's regulations (12 CFR 900.1) require the Finance Board, beginning in 2001, to adjust annually the cap on average total assets (CFI Asset Cap) set forth in section 2(13)(A)(ii) of the Bank Act (12 U.S.C. 1422(13)(A)(ii)) and § 925.1 of the Finance Board's regulations that defines a CFI, based on the annual percentage increase, if any, in the CPI-U, as published by the DOL.

Section 7(i)(2)(B) of the Bank Act (12 U.S.C. 1427(i)(2)(B)) and § 918.3(a)(1) of the Finance Board's regulations (12 CFR 918.3(a)(1)), require the Finance Board, beginning January 1, 2001, to make similar annual adjustments to the annual compensation limits set forth in section 7(i)(2)(A) of the Bank Act (12 U.S.C. 1427(i)(2)(A)) and § 918.3(a)(1), for members of the boards of directors of the Banks.

Section 951.3(a)(1)(iii) of the Finance Board's regulations (12 CFR 951.3(a)(1)(iii)) requires the Finance Board, beginning in 2003, to make similar annual adjustments to the maximum dollar limits set forth in § 951.3(a)(1)(i), on the amounts that a Bank may set aside annually from its annual required AHP contributions for the current year and the subsequent year, towards homeownership set-aside programs. In addition, § 951.3(a)(1)(iii) of the Finance Board's regulations (12 CFR 951.3(a)(1)(iii)) requires the Finance Board, beginning in 2003, to make similar annual adjustments to the maximum dollar limits set forth in § 951.3(a)(1)(ii), on the amounts that a Bank may set aside annually from its annual required AHP contributions for the current year and the subsequent year, towards an additional first-time homebuyer set-aside program.

Section 951.3(a)(2) of the Finance Board's regulations (12 CFR 951.3(a)(2)), requires the Finance Board, beginning in 2002, to make a similar annual adjustment to the maximum dollar limit set forth in § 951.3(a)(2), on the amount that a Bank may allocate from its annual required AHP contribution for the subsequent year to the current year's competitive application program.

For purposes of the CFI Asset Cap, the Finance Board is required to publish notice by **Federal Register** of the CPI-U-adjusted Cap. *See* 12 CFR 925.1. For purposes of the Banks' board of directors annual compensation limits, the Finance Board is required to publish notice, by **Federal Register**, distribution of a memorandum or otherwise, of the CPI-U-adjusted limits on such compensation. *See* 12 CFR 918.3(a)(1). For purposes of the maximum dollar limits on Banks' allocations from annual required AHP contributions, the Finance Board is required to publish notice, by **Federal Register**, distribution of a memorandum or otherwise, of the CPI-U-adjusted maximum dollar limits.

The annual adjustments of the existing CFI Asset Cap, annual Bank director compensation limits and maximum dollar limits on Bank allocations from annual required AHP contributions, effective January 1 of a particular calendar year, reflect the percentage by which the CPI–U published for November of the preceding calendar year exceeds the CPI–U published for November of the year before the preceding calendar year (if at all). For example, the adjustments of the limits effective January 1, 2004 are based on the percentage increase in the CPI–U from November 2002 to November 2003. The CFI Asset Cap is rounded to the nearest million dollars, the annual compensation limits are rounded to the nearest dollar and the limits on allocations from AHP contributions are rounded to the nearest $100,000.[1]

The Finance Board has determined that it is appropriate to use data from November rather than waiting for the December data to become available so that the Banks can be notified of the adjusted CFI Asset Cap, annual Bank director compensation limits and AHP maximum dollar allocation limits as close to the January 1 effective date as possible. Other Federal agencies do not rely on December data, which is published in mid-January, when calculating annual inflation adjustments and, as a result, are able to announce their adjustments prior to the effective date of January 1.

The DOL encourages the use of CPI–U data that has not been seasonally adjusted in ''escalation agreements'' because seasonal factors are updated annually and seasonally adjusted data are subject to revision for up to five years following the original release. Unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered. Accordingly, the Finance Board is using data that has not been seasonally adjusted to calculate the new CFI Asset Cap, annual Bank director compensation limits and AHP maximum dollar allocation limits.

The unadjusted CPI–U increased 1.8 percent between November of 2002 and November of 2003. Based on this data, pursuant to the requirements of § 925.1, the Finance Board has adjusted the CFI Asset Cap from the 2003 limit of $538 million to $548 million, effective January 1, 2004. The Finance Board arrived at the adjusted limit of $548 million by rounding to the nearest million.

Pursuant to § 918.3(a)(1), based on the 1.8 percent increase in the unadjusted CPI–U, the Finance Board has adjusted

[1] All adjusted limits referred to in this notice have been rounded to some dollar level. However, the calculations of new limits are based on cumulative CPI–U changes applied to the limits as they first appeared in finance Board regulations, and hence are not distorted over time by rounding.

the annual compensation limits for the members of the boards of directors of the Banks as follows, effective January 1, 2004: For a Chairperson—$27,405; for a Vice-Chairperson—$21,924; for any other member of a Bank's board of directors—$16,443. The Finance Board arrived at the adjusted annual compensation limits by rounding to the nearest dollar.

Pursuant to § 951.3(a)(1)(iii), the Finance Board applied the 1.8 percent increase in the unadjusted CPI–U to the maximum dollar limits on the amounts that a Bank may set aside from its annual required AHP contributions for the current year and the subsequent year, toward homeownership set-aside programs. Rounding the result to the nearest $100,000, the maximum dollar limit remains at the 2003 level of $3.1 million, effective January 1, 2004.

Pursuant to § 951.3(a)(1)(iii), based on the 1.8 percent increase in the unadjusted CPI–U, the Finance Board has adjusted the maximum dollar limit on the amount that a Bank may set aside from its annual required AHP contributions, for the current year and the subsequent year, towards an additional first-time homebuyer set-aside program, from the 2002 limit of $1.5 million to $1.6 million, effective January 1, 2004. The Finance Board arrived at the adjusted limit of $1.6 million by rounding to the nearest $100,000.

In addition, pursuant to § 951.3(a)(2), the Finance Board applied the 1.8 percent increase in the unadjusted CPI–U, to the maximum dollar limit on the amount that a Bank may allocate from its annual required AHP contribution for the subsequent year to the current year's competitive application program. Rounding the result to the nearest $100,000, the maximum dollar limit remains at the 2003 level of $3.1 million, effective January 1, 2004.

Dated: December 22, 2003.

By the Federal Housing Finance Board.

John T. Korsmo,

Chairman.

[FR Doc. 03–32309 Filed 12–31–03; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 23, 2004.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Hampden Bancorp, MHC, Springfield, Massachusetts to become a bank holding company by acquiring 100 percent of the voting shares of Hampden Bank, and thereby indirectly acquire voting shares of Hampden Savings Bank, Springfield, Massachusetts.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Southwest Georgia Financial Corporation, Moultrie, Georgia; to acquire 100 percent of the voting shares of First Bank Holding Company, and thereby indirectly acquire voting shares of Sylvester Banking Company, Sylvester, Georgia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Pittsfield Community Bancorp, Inc., Pittsfield, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Pittsfield, Pittsfield, Illinois, and Community State Bank of Plymouth, Plymouth, Illinois.

2. Templar Fund, Inc., St. Louis, Missouri; to acquire up to 43.7 percent of the voting shares of Truman Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire voting shares of Truman Bank, St. Louis, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Regional Bancshares, Inc., McAllen, Texas, and Texas Regional Delaware, Inc., Wilmington, Delaware; to merge with Southeast Texas Bancshares, Inc., Beaumont, Texas, and thereby indirectly acquire voting shares of Texas Community Bancshares of Delaware, Wilmington, Delaware, and Community Bank and Trust, SSB, Beaumont, Texas.

2. Treaty Oak Holdings, Inc., and Treaty Oak Bancorp, Inc., both of Austin, Texas; to become bank holding companies by acquiring 100 percent of the voting shares of Texline State Bank, Texline, Texas.

Board of Governors of the Federal Reserve System, December 24, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–32271 Filed 12–31–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans. #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—12/01/2003			
20040112	Gerald W. Schwartz	Magellan Health Services, Inc (Debtor-in-Possession).	Gerald W. Schwartz, Magellan Health Services, Inc. (Debtor-in-Possession).
20040122	Lindsay Goldberg & Bessemer L.P	Waker Familiengesellschaft mbH & Co. KG.	Lindsay Goldberg & Bessemer L.P., Wacker Construction Equipment AG, Waker Familiengesellschaft mbH & Co. KG.
20040128	General Electric Company	Amersham plc	Amersham plc, General Electric Company.
20040157	Heartland Industrial Partners, L.P	DaimlerChrysler AG	DaimlerChrysler AG, Heartland Industrial Partners, L.P., NC–M Chassis Systems, LLC.
20040158	Starcraft Corporation	Wheel to Wheel, Inc	Starcraft Corporation, Wheel to Wheel, Inc.
20040163	Soros Limited Partner LLC	MyTravel Group plc	Auto Europe, LLC, MyTravel Group plc, Soros Limited Partner LLC.
20040167	Perry Partners, L.P	Republic Engineered Products Holdings LLC.	Blue Steel Capital Corp., N&T Railway Company LLC, Perry Partners, L.P., Republic Engineered Products Holdings LLC, Republic Engineered Products LLC.
20040168	Cisco Systems Inc	Latitude Communications, Inc	Cisco Systems, Inc., Latitude Communications, Inc.
20040171	Taylor & Francis Group plc	Marcel Dekker, Inc	Marcel Dekker, Inc., Taylor & Francis Group plc.
20040175	VNU N.V	VNU N.V	RBNMR, Inc., VNU N.V.
20040176	IdeaSphere, Inc	Twinlab Corporation (Debtor-in-Possession).	IdeaSphere, Inc., Twinlab Corporation (Debtor-in-Possession), Twin Laboratories Inc., Twin Laboratories (UK) Ltd).
20040181	Duquesne Light Holdings, Inc	WPS Resources Corporation	Duquesne Light Holdings, Inc., Sunbury Generation, LLC, WPS Resources Corporation.
Transactions Granted Early Termination—12/02/2003			
20030971	Wind Point Partners V, L.P	Process Chemicals, L.L.C	ARR–MAZ Management Company, AAR–MAZ Products, L.P., Process Chemicals, L.L.C., Wind Point Partners V, L.P.
20040160	American Republic Mutual Holding Company.	World Mutual Holding Company	American Republic Mutual Holding Company, World Insurance Company, World Mutual Holding Company.
20040184	KKR European Fund, Limited Partnership.	DaimlerChrysler AG	DaimlerChrysler AG, KKR European Fund, Limited Partnership, MTU Aero Engines GmbH.
Transactions Granted Early Termination—12/03/2003			
20040094	CommScope, Inc	Avaya Inc	Avaya Inc., CommScope, Inc.
20040096	Wachovia Corporation	Richard Hollander	Metropolitan West Securities, LLC, Richard Hollander, Wachovia Corporation.
20040202	Sun Capital Partners III QP, LP	Horsehead Industries, Inc	Chestnut Ridge Railway Company, Equidae Partners, HII Corporation, Horsehead Industries, Inc., Horsehead Resource Development, Inc., HRD Investment Company, Inc., Minerals and Resources Recovery Corp., NJZ Colors, Inc., Palmer Water Company, Pegasus Service Corporation, Sterling Resources, Inc., Stoney Ridge Materials, Inc., Sun Capital Partners III QP, LP, The New Jersey Zinc Co., Inc., ZCA Engineered Powders, Inc., ZCA Mines, Inc., ZCA Oil & Gas, Inc., ZCA Powders, Inc., Zinc Company of America, Inc.

Trans. #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—12/04/2003			
20040169	Saft Finance SARL	Alcatel	Alcatel, ASB Aerospatiale Batteries, Friemann & Wolf Battereietechnik Gmbh, SAFT AB (Sweden), SAFT America, Inc., SAFT A/S (Norway), SAFT Australia Pty Ltd., SAFT Baterias SL, SAFT Ferak, SAFT Finance SARL, SAFT Hong Kong Ltd., SAFT Nife Middle East Ltd., SAFT SA (France).
20040177	Cypress Merchant Banking Partners II L.P.	Green Equity Investors II, L.P	Communications & Power Industries Holding Corporation, Cypress Merchant Banking Partners II L.P., Green Equity Investors II, L.P.
20040183	TPG Polymer Holdings LLC	Ripplewood Chemical Holding LLC	Ripplewood Chemical Holding LLC, TPG Polymer Holdings LLC.
20040187	MatlinPatterson Global Opportunities Partners (Bermuda) L.P.	NRG Energy, Inc	MatlinPatterson Global Opportunities Partners (Bermuda) L.P., NRG Energy, Inc.
20040188	MatlinPatterson Global Opportunities Partners L.P.	NRG Energy, Inc	MatlinPatterson Global Opportunities Partners L.P. NRG Energy, Inc.
Transactions Granted Early Termination—12/05/2003			
20040086	Lockheed Martin Corporation	The Titan Corporation	Lockheed Martin Corporation, The Titan Corporation.
20040165	Capital Environmental Resource Inc	Allied Waste Industries, Inc	Allied Waste Industries, Inc. BFI Waste Systems of North America, Inc., Browning-Ferris Industries of Florida, Inc., Capital Environmental Resource Inc. E. Leasing Company, LLC, Jones Road Landfill and Recycling, Ltd.
20040180	Orthofix International N.V	Breg, Inc	Breg, Inc. Orthofix International N.V.
20040193	The Charles Schwab Corporation	SoundView Technology Group, Inc	SoundView Technology Group, Inc., The Charles Schwab Corporation.
Transactions Granted Early Termination—12/08/2003			
20040164	Blyth, Inc	Jackson Acquisition Company, LLC d/b/a Walter Drake.	Blyth, Inc., Jackson Acquisition Company, LLC d/b/a Walter Drake.
20040194	Granada Pic	Carlton Communications Pic	Carlton Communication Pic, Granada Pic.
20040197	Ormat Industries Ltd	Covanta Energy Corporation	Covanta Energy Corporation, Covanta SIGC Energy II, Inc., Covanta SIGC Energy, Inc., Heber Field Company, Herber Geothermal Company, Mammoth Geothermal Co., Mammoth-Pacific, L.P., Ormat Industries Ltd., Pacific Geothermal Co., Second Imperial Geothermal Company, L.P.
20040200	CH2M HILL Companies, Ltd	J.A. Jones, Inc., a debtor-in-possession.	CH2M HILL Companies, Ltd., J.A. Jones, Inc., a debtor-in-possession, Lockwood Greene Engineers, Inc.
20040204	Symantec Corporation	ON Technology Corporation	ON Technology Corporation, Symantec Corporation.
20040207	2000 Riverside Capital Appreciation Fund, L.P.	Andrew T. Parker	2000 Riverside Capital Appreciation Fund, L.P., American Hospice Management, Andrew T. Parker, Frontier Hospice LLC, Hospice of Arizona, LC, Hospice of Central Virginia.
20040208	2000 Riverside Capital Appreciation Fund, L.P.	Michael P. Rosen	2000 Riverside Capital Appreciation Fund, L.P., American Hospice Management, Frontier Hospice, LLC, Hospice of Arizona, LC, Hospice of Central Virginia, LLC, Michael P. Rosen.
20040213	Deere & Company	Nortrax, Inc	Deere & Company, Nortrax, Inc.

Trans. #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—12/09/2003			
20040206	Pegasus Partners II, L.P	Farmland Industries, Inc	Farmland Industries, Inc., Pegasus Partners II, L.P.
20040211	Wicks Communications and Media Partners, L.P.	Cox Enterprises, Inc	CoxCom, Inc., Cox Communications Kansas, L.L.C., Cox Enterprises, Inc., Peak Cablevision, L.L.C., TCA Cable Partners, TCA Cable Partners II, Wicks Communications and Media Partners, L.P.
20040212	HCA Inc	Triad Hospitals, Inc	Clinico, LLC, HCA Inc., IRHC, LLC, Kensingcare, LLC, OPRMC, LLC, Primary Medical, LLC, Triad Holdings III, LLC, Triad Hospitals, Inc., Trufor Pharmacy, LLC.
20040216	H Group Holding, Inc	Reliant Pharmaceuticals, LLC	H Group Holding, Inc., Reliant Pharmaceuticals, LLC.
Transactions Granted Early Termination—12/10/2003			
20030620	BASF Aktiengesellschaft	Sunoco, Inc	BASF Aktiengesellschaft, Sunoco, Inc.
20040146	AXA S.A	The MONY Group, Inc	AXA S.A., The MONY Group, Inc.
Transactions Granted Early Termination—12/11/2003			
20040162	Conexant Systems, Inc	GlobespanVirata, Inc	Conexant Systems, Inc., GlobespanVirata, Inc.
20040214	A. Jerrold Perenchio	Ronald J. Morey	A. Jerrold Perenchio, Jarad Broadcasting Company, Inc., Ronald J. Morey.
Transactions Granted Early Termination—12/12/2003			
20040185	Thomas H. Lee Equity Fund V, L.P ..	Fenway Partners Capital Fund II, L.P	Fenway Partners Capital Fund II, L.P., Simmons Holdings, Inc., Thomas H. Lee Equity Fund V, L.P.
Transactions Granted Early Termination—12/15/2003			
20040144	CIBER, Inc	SCB Computer Technology, Inc	CIBER, Inc., SCB Computer Technology, Inc.
20040199	Occidental Petroleum Corporation	Exxon Mobile Corporation	Exxon Mobile Corporation, Mobil Pipe Line Company, Occidental Petroleum Corporation.
20040218	Gilbert Global Equity Partners, L.P	The Kattegat Trust	CPM Holdings, Inc., Gilbert Global Equity Partners, L.P., The Kattegat Trust.
20040224	Citigroup, Inc	Washington Mutual, Inc.	Citigroup Inc., Washington Mutual Finance Corporation, Washington Mutual Finance Group, LLC, Washington Mutual, Inc
20040229	Green Equity Investors IV, L.P	FTD, Inc	FTD, Inc., Green Equity Investors IV, L.P.
20040230	ArcLight Energy Partners Fund I, L.P	Aquila, Inc	Aquila, Inc., ArcLight Energy Partners Fund I, L.P., UtilCo SaleCo, LLC.
20040231	The Hartford Financial Services Group, Inc.	Loews Corporation	Charles Stedman & Co., Inc., CNA Group Life Assurance Company, Lowes Corporation, The Hartford Financial Services Group, Inc.
20040233	Network Appliance, Inc.	Spinnaker Networks, Inc	Network Appliance, Inc., Spinnaker Networks, Inc.
20040236	Mr. Arthur Liu	Radio Unica Communications Corp ..	Mr. Arthur Liu, Radio Unica Communications Corp.
20040238	Fiserv, Inc	MedPay Corporation	Fiserv, Inc., MedPay Corporation.
20040240	Vestar Capital Partners IV, L.P	Essent Healthcare, Inc	Essent Healthcare, Inc., Vestar Capital Partners IV, L.P.
20040244	Omnicom Group Inc	Icon Holding Corp	Icon Holding Corp., Omnicom Group Inc.
20040256	USB AB	Suez	Ripon Cogeneration, Inc., Suez, USB AG.

Trans. #	Acquiring	Acquired	Entities
20040258	Frontenac VII Limited Partnership	CCCC Growth Fund, LLC	CCCC Growth Fund, LLC, Frontenac VII Limited Partnership, WNC Insurance Services, Inc.
20040259	OCM Principal Opportunities Fund II, L.P.	Alliance Communications, LLC	Alliance Communications, LLC, Alliance Communications Partners, L.P., OCM Principal Opportunities Fund II, L.P.
Transactions Granted Early Termination—12/16/2003			
20040192	Quanex Corporation	Kirtland Capital Partners II L.P	Kirtland Capital Partners II L.P., Quanex Corporation, TruSeal Technologies, Inc.
20040209	Pentair, Inc	Veolia Environnement, S.A	Everpure, Inc., Pentair, Inc., Veolia Environnement, S.A.
20040217	Bain Capital Fund V–B, L.P	Sealy Corporation	Bain Capital Fund V–B, L.P., Sealy Corporation.
20040225	Hughes Supply, Inc	FS Equity Partners IV, L.P	Century Maintenance Supply, Inc., FS Equity Partners IV, L.P., Hughes Supply, Inc.
20040237	Polycom, Inc	Voyant Technologies, Inc	Polycom, Inc., Voyant Technologies, Inc.
20040261	Thomas H. Lee Parellel Fund V, L.P	THL Bedding Holding Company	THL Bedding Holding Company, Thomas H. Lee Parellel Fund V, L.P.
Transactions Granted Early Termination—12/17/2003			
20040148	Bank of America Corporation	FleetBoston Financial Corporation	Bank of America Corporation, FleetBoston Financial Corporation.
20040153	FLIR Systems, Inc	Indigo Systems, Inc	FLIR Systems, Inc., Indigo Systems, Inc.
20040241	Behrman Capital III L.P.	Brett R. Keith	Behrman Capital III L.P., Brett R. Keith, Hunter Defense Technologies, Inc.
20040247	Exelon Corporation	Reservoir Capital Partners, L.P	Exelon Corporation, Reservoir Capital Partners, L.P., Sithe/Independence Power Partners, L.P.
20040248	Reservoir Capital Partners, L.P	Exelon Corporation	Exelon Corporation, Reservoir Capital Partners, L.P., Sithe/Independence Power Partners, L.P.
20040249	KAT Holdings, L.P	Paul D. Oddo and Angeline Oddo, husband and wife.	KAT Holdings, L.P., Paul D. Oddo and Angeline Oddo, husband and wife, Superior Engineered Products Corp.
20040251	Lyman B. Dickerson	Ionics, Incorporated	Ionics, Incorporated, Lyman B. Dickerson.
20040252	Ionics, Incorporated	Lyman B. Dickerson	Ecolochem, Inc., Ecolochem International, Inc., Ecolochem S.A.R.L., Ionics, Incorporated, Lyman B. Dickerson, Moson Holdings, L.L.C.
20040260	Thomas H. Lee Equity Fund V, L.P	THL Bedding Holding Company	THL Bedding Holding Company, Thomas H. Lee Equity Fund V, L.P.
20040266	Frank H. McCourt, Jr	News Corporation Limited	Dodgetown, Inc., Fox Baseball Holdings, Inc., Frank H. McCourt, Jr., Los Angeles Dodgers, Inc., News Corporation Limited, Venue Merchandising Inc.
20040268	A.A. Mordashov	Rouge Industries, Inc., Debtor in Possession.	A.A. Mordashov, Rouge Industries, Inc., Debtor in Possession.
20040287	Code Hennessy & Simmons IV, L.P	AMF Bowling Worldwide, Inc	AMF Bowling Worldwide, Inc., Code Hennessy & Simmons IV, L.P.
Transactions Granted Early Termination—12/18/2003			
20030388	General Electric Company	Agfa-Gevaert N.V	Agfa-Gevaert N.V., Agfa NDT Inc., General Electric Company.
20040220	Cardinal Health, Inc	Medicap Pharmacies Incorporated	Cardinal Health, Inc., Medicap Pharmacies Incorporated.

Trans. #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—12/19/2003			
20040098	WebMD Corporation	TPG Holding Company Limited	MediFax-EDI Holding Company, TPG Holding Company Limited, WebMD Corporation.
20040191	The Bank of New York Company, Inc.	Fifth Third Bancorp	Fifth Third Bancorp, Fifth Third Bank, Fifth Third Bank, Florida, Fifth Third Bank, Indiana, Fifth Third Bank Kentucky, Inc., Fifth Third Bank, (Michigan), Fifth Third Bank, Northern Kentucky, Inc., Fifth Third Bank, (Ohio), The Bank of New York Company, Inc.
20040242	Daniel Lebard	mg technologies AG	Daniel Lebard, mg technologies AG, Solvadis France (Holding) SAS.
20040243	Pascal Lebard	mg technologies AG	mg technologies AG, Pascal Lebard, Salvadis France (Holding) SAS.
20040255	American Capital Strategies, Ltd	Specialty Brands of America, L.P	American Capital Strategies, Ltd, Specialty Brands of America, L.P.
20040269	Progress Software Corporation	CCG Investments BVI, L.P	CCG Investments BVI, L.P., DataDirect Technologies (Cayman Islands), DataDirect Technologies GmbH (Germany), DataDirect Technologies, Inc. (Delaware), DataDirect Technologies Kabushiki Kaisha (Japan), DataDirect Technologies Limited (Ireland), DataDirect Technologies, Ltd (U.K.), DataDirect Technologies N.V. (Belgium), Progress Software Corporation.
20040281	ABRY Partners IV, L.P	Paul G. Allen	ABRY Partners IV, L.P., Charter Communications Holdings LLC, Charter Communications, Inc., Charter Communications, LLC, Charter Communications VI, LLC, Hornell Television Service, Inc., Interlink Communications Partners LLC, Paul G. Allen, The Helicon Group LP.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Legal Technician, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580. (202) 326–3100.

By Direction of the Commission.

Shira P. Minton,

Acting Secretary.

[FR Doc. 03–32269 Filed 12–31–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 021 0119]

Tenet Healthcare Corporation, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 22, 2004.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: David Narrow, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2549.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 24, 2003), on the World Wide Web, at ''*http://www.ftc.gov/os/2003/12/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW.,

Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Tenet Healthcare Corporation (''Tenet'') and Frye Regional Medical Center, Inc. (''Frye''). The agreement settles charges that Tenet and Frye (''Respondents'') violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by directly facilitating the orchestration and implementation of agreements among the physician members of Piedmont Health Alliance, Inc. (''PHA'') to fix prices and other terms on which the physicians would deal with health plans, and to refuse to deal with such purchasers except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify its terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Tenet or Frye that they violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint Allegations

Frye is a for-profit corporation that operates a 338-bed hospital in Hickory, North Carolina. Tenet is a for-profit corporation that owns or operates over 100 hospitals throughout the United States, including Frye. Frye was instrumental in the foundation and operation of PHA, a for-profit physician-hospital organization (''PHO''), operating in the western North Carolina area of Catawba, Burke, Caldwell, and Alexander Counties that is known as the ''Unifour'' area. PHA has as members approximately 450 physicians, or roughly 75% of the physicians in the Unifour area, and three of the five Unifour area hospitals, including Frye. A separate complaint has been issued against PHA and 10 of its physician leaders relating to their activities.

In 1993, Frye's Chief Executive Officer (''CEO'') developed a plan to create a PHO that would include Frye and the physicians practicing at Frye. He hired a consultant to survey the Frye physicians regarding what they would expect from a PHO. The consultant reported that the Frye practicing physicians ''stated a need to form the group to negotiate with group clout and power'' and ''maintain their income'' in anticipation of the arrival of managed care organizations in the Unifour area. Frye's CEO and Chief Operating Officer (''COO''), along with eight physicians practicing at Frye, formed a steering committee, which was responsible for establishing and organizing the PHO.

PHA was established in 1994 with the aim of facilitating collective bargaining by physicians with health plans in order to obtain more favorable fees and other terms than PHA's physician members could obtain through dealing individually with health plans. In early 1994, the PHA steering committee established the Contracts Committee to negotiate contracts with payors on behalf of PHA's physician members. Frye's Chief Financial Officer (''CFO'') and COO actively participated on the Contracts Committee, and were the PHA physicians' principal contract negotiators between 1994 and 1996. In 1996, PHA expanded to include Caldwell Memorial Hospital (''Caldwell Memorial'') and Grace Hospital (''Grace''), both nonprofit hospitals, and their respective medical staffs.

PHA is managed and controlled by a Board of Directors made up of 14 physician directors and six hospital directors, two representing each hospital member (but with only one vote per hospital member). Thus, Frye has two representatives on the PHA Board of Directors. Both a majority of PHA physician directors and two of the three voting hospital directors must approve each payor contract entered into on behalf of PHA's physician members. The PHA Board representatives voted on the approval of contracts containing physician fee schedules that PHA collectively negotiated with payors. Since 1994, PHA has negotiated and executed over 50 contracts with payors.

The complaint alleges that with the assistance of Frye and Tenet, PHA has successfully coerced a number of health plans to pay artificially high prices to PHA physician members, and thereby raised the cost of medical care in the Unifour area. As a result of the challenged actions of Tenet and Frye, consumers in the Unifour area have been, and are, deprived of the benefits of competition among physicians. By facilitating agreements among PHA member physicians to deal only on collectively-determined terms, and through PHA's and its members' actual or threatened refusals to deal with health plans that would not meet those terms, Tenet and Frye have violated Section 5 of the FTC Act. The collective negotiation of fees and other competitively significant terms by PHA physician members with the assistance of Frye and Tenet has not been, and is not, reasonably necessary to achieving any efficiency-enhancing integration.

The Proposed Consent Order

The proposed consent order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence, while allowing Tenet and Frye to engage in legitimate conduct that does not impair competition. For example, other than the limitation in Paragraph IV regarding acting as an agent or messenger, the proposed order does not prohibit involvement in vertical arrangements between Frye or Tenet and physicians that do not involve illegal horizontal agreements among physicians. The proposed order is similar to recent orders that the Commission has issued to settle charges relating to unlawful agreements to raise physician prices.

The proposed order's specific provisions are as follows:

The order's core prohibitions are contained in Paragraphs II, III, and IV. Paragraph II.A prohibits Tenet and Frye from entering into or facilitating any agreement between or among any physicians practicing in the Unifour area: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving PHA.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the Respondents from facilitating exchanges of information

between or among physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bans them from attempting to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D prohibits Respondents from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other orders addressing health care providers' collective bargaining with payors, certain kinds of agreements are excluded from the general bar on joint negotiations. First, Tenet and Frye would not be barred from activities solely involving their employed physicians. Second, Tenet and Frye are not precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing hospitals and physicians, whether a ''qualified risk-sharing joint arrangement'' or a ''qualified clinically-integrated joint arrangement.'' However, such arrangements must not restrict the ability, or facilitate the refusal, of the arrangements' physician members to deal with payors on an individual basis or through any other arrangement. As discussed below in connection with Paragraph V, Tenet and Frye are required to notify the Commission about such an arrangement prior to negotiating on behalf of the arrangement's members or before those members jointly discuss any terms of dealing with a payor.

As defined in the proposed order, a ''qualified risk-sharing joint arrangement'' must satisfy two conditions. First, all physician and hospital participants must share substantial financial risk through the arrangement and thereby create incentives for the physician or hospital participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

As defined in the proposed order, a ''qualified clinically-integrated joint arrangement'' also must satisfy two conditions. First, all physician and hospital participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of interdependence and cooperation among physicians and/or hospitals, in order to control costs and ensure the quality of services provided. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

Paragraph III requires Tenet to assure that no physician practicing in a medical group practice owned or controlled in any manner by Tenet or Frye submits claims for payment pursuant to a preexisting contract between PHA and any payor, where such claims are for services provided at any time 90 or more days after the date the order becomes final. However, the order permits these physicians to continue to submit claims for services pursuant to certain PHA contracts listed in Confidential Appendix A. The purpose of Paragraph III is to prevent Tenet and Frye employed or contracted physicians from continuing to receive the benefit of the unlawfully fixed prices under PHA's contracts with payors.

Paragraph IV prohibits Tenet and Frye, for four years, from directly or indirectly entering into any arrangements with any physicians practicing in the Unifour area under which Tenet or Frye would act as an agent or messenger for those physicians regarding contracting or terms of dealing with payors. An exception is made for those physicians employed by Tenet or Frye.

In the event that Frye or Tenet forms a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, Paragraph V requires the Respondents, for five years, to notify the Commission at least 60 days prior to initially contacting, negotiating, or entering into agreements with payors concerning the arrangement. This notice is not required for arrangements in which all the physician participants are employed by Frye or Tenet. Notification is not required for subsequent negotiations or agreements with payors pursuant to any arrangement for which notice was already given under Paragraph V. Paragraph V.B sets out the information necessary to make the notification complete. Paragraph V.C establishes the Commission's right to obtain additional information regarding the arrangement.

Paragraph VI.A prohibits Tenet and Frye from challenging or interfering with the termination, required by any Commission order, of any contract between PHA and any payor, pursuant to which Frye is reimbursed for hospital, physician, or other healthcare services. This provision helps to ensure the effectiveness of any future Commission order against PHA.

Paragraph VI.B requires Tenet to distribute the order and complaint, within 30 days after the order becomes final, to each officer who is at the level of senior vice-president or higher, each member of the board of directors, and each Tenet regional director of managed care; to the CEO, the CFO, and each person having primary responsibility for managed care contracting of each hospital, other than Frye, owned or controlled by Tenet; and to each officer, each member of the board of directors, and each person having primary responsibility for managed care contracting for Frye.

Paragraph VI.C requires Tenet to distribute the complaint and order, within 30 days after the order becomes final, to every payor with which Frye has been in contact since January 1, 1994, regarding the provision of hospital or physician services.

Paragraph VI.E.3 requires Tenet to cooperate with Commission staff in any litigation, or other action taken by the Commission, against PHA and any of its member physicians.

The remaining provisions of Paragraph VI, and Paragraphs VII through IX, of the proposed order impose obligations on Tenet (or Frye, if it is no longer owned or controlled by Tenet), with respect to distributing the proposed complaint and order to payors that contract with Frye and to other specified persons, and the reporting of certain information to the Commission.

The proposed order will expire in 20 years.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 03–32268 Filed 12–31–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Statement of Organization, Functions, and Delegations of Authority

Part T (Agency for Toxic Substances and Disease Registry) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129–25130, dated June 17, 1985, as amended most recently at 67 FR 67858, dated November 7, 2002) is amended to reflect the reorganization of the Agency for Toxic Substances and Disease Registry (ATSDR).

Section T–B, Organization and Functions, is hereby amended as follows:

After the functional statement for the *Office of the Administrator (TA),* delete

the title and functional statement for the *Office of the Assistant Administrator (TB),* and insert the following:

Office of the Director (TB). (1) Manages, directs, coordinates, and evaluates all health-related programs of the National Center for Environmental Health (NCEH) and the Agency for Toxic Substances and Disease Registry (ATSDR); (2) provides overall leadership in health-related activities for hazardous substances, hazardous waste sites and chemical releases; (3) provides overall coordination for the research programs and science policies of the agencies; (4) develops goals and objectives and provides leadership, policy formulation, scientific oversight, and guidance in program planning and development; (5) provides overall budgetary and human resource management and administrative support; (6) provides information, publication and distribution services to NCEH/ATSDR; (7) maintains liaison with other Federal, State, and local agencies, institutions, and organizations; (8) coordinates NCEH/ATSDR program activities with other CDC components, other Federal, State and local Government agencies, the private sector, and other nations; and (9) directs and coordinates activities in support of the Department's Equal Employment Opportunity program and employee development.

Delete the title and functional statement for the *Office of Program Operations and Management (TB1)* and insert the following:

Office of Financial and Administrative Services (TB1). (1) Plans, manages, directs, and conducts the administrative and financial management operations of NCEH/ATSDR; (2) reviews the effectiveness and efficiency of administration and operation of all NCEH/ATSDR programs; (3) develops and directs systems for human resource management, financial services, procurement requisitioning, and travel authorization; (4) provides and coordinate services for the extramural award activities of NCEH/ATSDR; (5) formulates and executes the budget; and (6) develops and directs a system for cost recovery.

Abolish in their entirety the following titles and functional statements: *Program Analysis Branch (TB12), Program Support Branch (TB13),* and the *Information Resources Management Branch (TB14).*

Delete the title and functional statement for the *Office of Policy and External Affairs (TB4)* and insert the following:

Office of Policy, Planning, and Evaluation (TB4). (1) Coordinates, develops, recommends and implements strategic planning and tracking for NCEH/ATSDR; (2) develops and manages an evaluation program to ensure adequacy and responsiveness of NCEH/ATSDR activities; (3) participates in reviewing, coordinating, and preparing legislation, briefing documents, Congressional testimony, and other legislative matters; (4) maintains liaison and coordinates with other Federal agencies for program planning and evaluation; (5) assists in the development of NCEH/ATSDR budget and program initiatives; (6) provides liaison and staff offices and other officials of CDC; (7) monitors and prepares reports on health-related activities to comply with provisions of relevant legislation; (8) coordinates the development, review, and approval of Federal regulations, Federal Register announcements, request for OMB clearance, and related activities; (9) develops and strengthens strategic partnerships with key constituent groups; and (10) facilitates communication between NCEH/ATSDR and its partners.

Retitle the *Office of Regional Operations (TBC)* to the *Division of Regional Operations (TBC).*

After the *Division of Regional Operations (TBC),* insert the following:

Office of Communications (TBD). (1) Provides technical assistance to Divisions on management issues, public affairs, and health communications strategies; (2) collaborates with external organizations and the news, public service, and entertainment and other media to ensure that effective findings and their implications for public health reach the public; (3) collaborates closely with Divisions to produce materials designed for use by the news media, including press releases, letters to the editor, public service announcements, television programming, video news releases, and other electronic and printed materials; (4) secures appropriate clearance of these materials within NCEH/ATSDR and CDC; (5) coordinates the development and maintenance of Center/Agency-wide information systems through an Internet Home Page; (6) develops strategies and operational systems for the proactive dissemination of effective findings and their implications for prevention partners and the public; (7) apart from the clearinghouses, hotlines, or other contractual mechanisms, responds to public inquiries and distributes information materials; (8) provides editorial, graphics, and publishing services for NCEH/ATSDR staff; (9) operates a NCEH/ATSDR Information Center; (10) maintains liaison with CDC public affairs and communications staff offices; (11) provides publications-related activities including editing, preparing articles and drafting news releases, distributing publications, and bibliographic services; and (12) provides public relations and publication-related activities.

Delete in their entirety the following titles and functional statements for the *Program Evaluation, Records and Information Services Branch (TB64), Division of Health Assessment and Consultation (TB6): Program Enhancement Section (TB642)* and *Spatial Analysis and Information Dissemination Section (TB643).*

Delete in their entirety the following titles and functional statements within the *Exposure Investigations and Consultations Branch (TB68): Consultations Section (TB682), Exposure Investigations Section (TB683,* and *Petition Response Section (TB685).*

Within the *Federal Facilities Assessment Branch (TB69),* delete in their entirety the following titles and functional statements: *Defense Section (TB692), Energy Section A (TB694),* and *Energy Section B (TB695).*

Within the *Superfund Site Assessment Branch (TB6A),* delete in their entirety the following titles and functional statements: *Section A (TB6A2), Section B (TB6A3),* and *State Programs Section (TB6A4).*

Within the *Emergency Response and Scientific Assessment Branch (TB95), Division of Toxicology (TB9)*, delete in their entirety the following titles and functional statements: *Emergency Response Section (TB952)* and the *Scientific Assessment Section (TB953).*

Dated: December 16, 2003.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–31905 Filed 12–31–03; 8:45 am]

BILLING CODE 4160–70–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations for Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR

69296, October 20, 1980, as amended most recently at 68 FR 65935–37, dated November 24, 2003) is amended to reflect the reorganization of the Epidemiology Program Office.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the mission statement for the *Epidemiology Program Office (CB)* and insert the following:

(1) Plans, directs, and managed CDC-wide training and service programs, including the Epidemic Intelligence Service (EIS), the Preventive Medicine Residency (PMR), and the Public Health Program Specialist (PHPS) programs, as well as various internship and fellowship programs; (2) plans, develops, edits, publishes and disseminates the Morbidity and Mortality Weekly Report (MMWR), related publications, and various scientific and health communication documents and special reports; (3) serves as a focal point for the development of innovative methods for the collection, analysis, and communication of public health surveillance information (*e.g.* National Electronic Telecommunications System for Surveillance, 121 Cities Mortality Reporting System, and CDC WONDER); (4) in collaboration with other Centers, Institute, and Offices (CIOs) and state health departments, coordinates, develops, implements, and supports various public health information systems for agency application; (5) provides consultation, technical assistance, and training on epidemiology, public health surveillance and informatics, health information systems, prevention effectiveness, scientific communications, behavioral science, statistics, and development of community health practice guidelines to CDC/ATSDR, states, other agencies, other countries, and domestic and international organizations; (6) provides epidemiologic assistance and epidemic aid through the field assignment of epidemiologists; (7) provides liaison with governmental agencies, international organizations, the Council of State and Territorial Epidemiologists, and other outside groups; (8) plans, conducts, and evaluates research activities in various aspects of disease and injury control for global programs; (9) promotes the development of international field epidemiologic training programs; (10) develops, promotes, and implements programs for international and domestic data policy formation for decision makers to identify information needs and to use information for improved decision making; (11) in carrying out the above functions, collaborates, as appropriate, with the CDC Office of the Director, other CDC CIOs, domestic and international agencies and organizations; and (12) organizes and establishes populations for research in urban areas.

Delete the functional statement for the *Office of the Director (CB1)* and insert the following:

(1) Manages, directs, coordinates, and evaluates the activities of EPO; (2) develops goals and objectives and provides leadership, policy formation, scientific oversight, and guidance in program planing and development; (3) coordinates EPO program activities with other CDC components, other PHS agencies, other federal agencies, other international organizations, state and local health departments, community-based organizations, business, and industry; (4) consults and coordinates activities with medical, scientific, and other professional organizations interested in epidemiology, public health surveillance and informatics, health information systems, terrorism and emergency response, behavioral science, statistics, scientific communications, community health practice guidelines, prevention effectiveness, and training activities; (5) ensures quality of scientific products of EPO staff and adherence to ethical principles and guidelines as specified in Department of Health and Human Services (DHHS) policy statements; (6) coordinates technical assistance to states, other nations and international organizations; (7) advises the Director, CDC, on policy matters concerning EPO activities; (8) conducts EPO planning and evaluation activities; (9) reviews, prepares, and coordinates legislation, congressional testimony, and briefing documents; (10) within the policies and guidelines of DHHS and CDC, conducts EPO planning and evaluation activities including tracking program objectives and performing evaluation studies; (11) coordinates the annual EPO program briefing, including preparation of all written and visual materials; (12) maintains liaison, on behalf of EPO, with the CDC Foundation and other similar organizations for the coordination of mutually beneficial collaborative activities; (13) plans and prepares EPO promotional and marketing materials; and (14) organizes and establishes populations for research in urban areas.

Delete the functional statement for the *Office of Scientific and Health Communications (CB12)* and insert the following: (1) Plans, coordinates, edits, and produces the MMWR series and various special reports and publications; (2) provides editorial services and support to EPO; (3) develops, implements, and evaluates innovative methods for the communication of scientific and health information by EPO and its domestic and international constituents; (4) assists EPO and its constituents in identifying and building needed expertise, state-of-the-art technology, logistical support, and other capacities required to conduct effective scientific and health communication in domestic and international settings; (5) provides expert consultation and training to EPO, other CIOs, and outside domestic and international constituencies on development of effective messages, materials, and methods to clearly and effectively communicate risks and prevention recommendations, including written, oral, and visual communication; (6) provides leadership, coordination, and collaboration for the planning and management of EPO communications with other CDC programs and outside organizations in scientific and health communications, including serving as the primary EPO liaison with the CDC Office of Communication; (7) works closely with state and federal agencies and EPO domestic and international constituents to develop health information networks and to promote information sharing; (8) in conjunction with the CDC Office of Communication, collaborates with organizations in the public and private sectors to market prevention strategies; (9) coordinates EPO's information-sharing activities, including involvement on the Internet; (10) develops, plans, coordinates, edits, and produces the weekly component of the MMWR series; (11) participates with other office personnel for the delivery of services and training to external organizations, both domestic and international, in the area of scientific and health communications; (12) provides EPO-wide desktop publishing support, including the support of the MMWR series; (13) develops, plans, coordinates, edits, and produces other components of the MMWR series, including the MMWR Recommendations and Reports, CDC Surveillance Summaries, and the Annual Summary of Notifiable Diseases; (14) plans, coordinates, edits, and produces other EPO and CDC program publications; (15) provides editorial services for work to be published outside CDC; (16) assists in review of EPO documents for editorial clearance for all publications; (17) develops and manages an internship program in scientific and health publications

management; and (18) participates with other office personnel for the delivery of services and training to external organizations, both domestic and international, in scientific and health communications.

Delete the functional statement for the *Office of Program Management and Operations (CB13)* and insert the following:

(1) Provides leadership, oversight, and guidance in the management and operations of EPO's programs; (2) plans, coordinates, and provides administrative management support, advice, and guidance to EPO, involving the areas of fiscal management, personnel, travel, and other administrative services; (3) coordinates the development of the EPO annual budget submission; (4) directs and coordinates the activities of the office; (5) conducts management analyses of EPO programs and staff to ensure optimal utilization of resources and accomplishment of program objectives; (6) plans, allocates, and monitors EPO resources; (7) maintains liaison and collaborates with other CDC components and external organizations in support of EPO management and operations; (8) plans, coordinates, and provides information resource management support, advice, and guidance to EPO; (9) sets policies and procedures; (10) provides leadership and oversight of EPO's program management and operations; (11) plans, allocates, and monitors EPO-wide resources; (12) works closely with other federal agencies involved with EPO interagency agreements; (13) coordinates EPO requirements relating to procurement, materiel management, and intragency agreements; (14) provides fiscal management and stewardship of grants, contracts, and cooperative agreements; (15) develops and implements administrative policies, procedures, and operations, as appropriate for EPO, and prepares special reports and studies, as required, in the administrative management areas; and (16) conducts management analyses of EPO programs and resources to ensure optimal utilization of resources and accomplishment of program objectives.

Office of Strategic Alliance for Prevention (CB14). (1) Provides leadership to CDC and other organizations to promote and support effective partnerships for prevention; (2) provides leadership and supports CDC's activities related to managed care organizations, public and private purchasers of health care, public health agencies, accrediting organizations, the health care delivery system, consumers, and others; (3) provides leadership to CDC and other organizations to promote and support effective partnerships for prevention among the key players in the nation's health care delivery system, including managed care organizations, public and private purchasers of health care, State and local health departments, public health agencies, accrediting organizations, care providers, consumers, and others; (4) advises CIOs on program and research needs as they relate to managed care and partnerships for prevention; (5) represents CDC in work with other governmental agencies and the private sector to improve health care quality and patient safety through initiatives such as the cross-governmental QuIC (Quality Interagency Coordinating) Task Force, the National Quality Report, the National Quality Forum, and the National Committee for Quality; (6) administers and manages contract research related to systems of care delivery; (7) provides coordinative support for CDC's Clinical Performance Measurement Working Group and Managed Care Working Group; and (8) facilitates communication and collaboration between CDC scientists and managed care researchers.

Delete the mission statement for the *Division of Prevention Research and Analytic Methods (CB7)* and insert the following:

(1) Provides leadership to CDC and other organizations about best practices based on research and scientific evidence by conducting scientific research, developing analytic methods in prevention effectiveness, and producing evidence-based products; (2) develops evidence-based recommendations for the use or non-use of population-based health interventions; (3) promotes CDC's capacity to conduct collaborative health services research with other CDC CIOs, other federal agencies, and state and local health departments; (4) provides leadership in the acquisition, application, and evaluation of economic, and decision science methods for use in public health; (5) develops capacity in the public health community to conduct and use prevention effectiveness studies; (6) develops new methods for evaluating delivery of preventive services; (7) provides consultation, technical assistance and training on analytic methods in prevention effectiveness, including prevention effectiveness, epidemiologic, evaluation, and behavioral studies issues to CDC and to other agencies and domestic and international organizations; and (8) develops projects in defined urban populations in which to evaluate the effectiveness of prevention activities.

Delete the functional statement for the *Office of the Director (CB71)* and insert the following:

(1) Manages, directs, and coordinates the research agenda and activities of the division; (2) provides leadership and guidance and strategic planning, policy, program and project priority planning and setting, program management, and operations; (3) establishes division goals, objectives, and priorities; (4) monitors progress in implementation of projects and achievement of objectives; (5) plans, allocates, and monitors resources; (6) provides management administrative and support services, and coordinates with appropriate EPO offices on program and administrative matters; (7) provides liaison with other CDC organizations, other governmental agencies, international organizations, and other outside groups; (8) provides support for internal scientific advisory groups; (9) provides scientific leadership and guidance to the division to assure highest scientific quality and professional standards; (10) provides coordinative support for CDC's Behavioral and Social Sciences Work Group; and (11) develops within CDC outcome evaluation capacity and systematic methods for evaluating health outcomes.

Delete the title and functional statement for the *Prevention Effectiveness Branch (CB72)* and insert the following:

Prevention Effectiveness and Health Economics Branch (CB72). (1) Establishes capacity in the public health community to conduct and use economic and decision analysis; (2) provides and maintains leadership in the development, acquisition, application, and evaluation of economic, decision science methods for use in public health; (3) conducts research about methods for public health economics and decision making; (4) provides economic technical assistance and training, consultation, direction, review and information resources to other organizational units within EPO and throughout CDC; (5) integrates prevention research with policy needs; (6) assists in making recommendations for policy decisions on public health policy based on prevention effectiveness of each prevention strategy; (7) conducts systematic literature reviews on the effectiveness, cost effectiveness, and other effects of population-based health promotion and disease prevention strategies and identifies gaps in evidence which can inform additional

research; (8) and supports CDC's Health Economics Research Group (HERG).

Delete in their entirety the titles and functional statements for the *Community Preventive Services Guide Section (CB732)* and the *Evaluation and Behavioral Science Methods Section (CB733),* within the *Statistics and Epidemiology Branch (CB73), Division of Prevention Research and Analytic Methods (CB7).*

After the *Statistics and Epidemiology Branch (CB73),* insert the following:

Community Guide and Evidence Branch (CB74). (1) Convenes and supports the independent Task Force on Community Preventive Services which develops evidence-based recommendations for the use or non-use of population-based health interventions; (2) produces and promotes use of the Guide to Community Preventive Services (Community Guide), a compilation of the systematic reviews, evidence-based recommendations, and research needs; (3) performs evidence reviews of the efficacy and effectiveness of prevention activities not associated with the Community Guide; (4) assists CDC and other Federal and non-Federal partners to understand, use, refine, and communicate methods for conducting systematic reviews; (5) assists CDC and other federal and non-Federal partners to link reviews of evidence to guidelines development and/or program implementation; (6) coordinates and manages large and diverse teams of internal and external partners in the systematic preview process; (7) coordinates and manages a working group of CDC, DHHS, and non-governmental partners to develop and/or refine methods for conducting systematic reviews; (8) provides consultations for implementing Community Guide recommended strategies; (9) coordinates and manages a working group of CDC, DHHS and non-governmental partners to diffuse Community Guide reviews, recommendations, and research needs to appropriate audiences throughout the U.S. health care and public health systems; (10) participates in the development of national and regional public/private partnerships to enhance prevention research and the translation of evidence into policy and action; (11) conducts scientific evaluation of the Division-related prevention activities; (12) identifies opportunities for and conducts passive and active dissemination of the Community Guide reviews and recommendations and integration of these products into decision-making process; (13) identifies and conducts passive and active dissemination of research needs identified in the Community Guide to key partners who have the capacity to fund and/or conduct additional research that would close gaps identified in the systematic reviews process; (14) communicates the Community Guide's reviews, recommendations, and research needs beyond the Morbidity and Mortality Weekly Report (MMWR) and the American Journal of Preventive Medicine (AJPM) publications via other journals, books, the world wide web, and other media; (15) designs and conducts programmatic, process and outcome evaluation strategies for all stages of development and diffusion of the Guide to Community Preventive Services; (16) creates materials and manages dissemination of the Community Guide and other Division tools that promote effective decision making and use of effective prevention tools; (17) assists in making recommendations for prevention and policy decisions; (18) provides technical assistance; (19) provides coordination support for CDC's Behavioral and Social Sciences Work Group; and (20) develops within CDC outcome evaluation capacity and systematic methods for evaluating health outcomes.

Dated: December 16, 2003.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–31907 Filed 12–31–03; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegation of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 68 FR 65935–37, dated November 24, 2003) is amended to reflect the reorganization of the National Center for Environmental Health (NCEH).

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the *Office of the Director (CNI)* and insert the following:

(1) Manages, directs, coordinates, and evaluates all health-related programs of NCEH and ATSDR; (2) provides overall leadership in health-related activities for hazardous substances, hazardous waste sites and chemical releases; (3) provides overall coordination for the research programs and science policies of the agencies; (4) develops goals and objectives and provides leadership, policy formulation, scientific oversight, and guidance in program planning and development; (5) provides overall budgetary and human resource management and administrative support; (6) provides information, publication and distribution services to NCEH/ATSDR; (7) maintains liaison with other Federal, State, and local agencies, institutions, and organizations; (8) coordinates NCEH/ATSDR program activities with other CDC components, other Federal, State and local Government agencies, the private sector, and other nations; and (9) directs and coordinates activities in support of the Department's Equal Employment Opportunity program and employee development.

Delete in its entirety the title and function statement for the *Special Programs Group (CN11).*

Following the functional statement for the Office of the Director (CN1), insert the following:

Office of Communications (CN12). (1) Provides technical assistance to Divisions on management issues, public affairs, and health communications strategies; (2) collaborates with external organizations and the news, public service, and entertainment and other media to ensure that effective findings and their implications for public health reach the public; (3) collaborates closely with Divisions to produce materials designed for use by the news media, including press releases, letters to the editor, public service announcements, television programming, video news releases, and other electronic and printed materials; (4) secures appropriate clearance of these materials within NCEH/ATSDR and CDC; (5) coordinates the development and maintenance of Center/Agency-wide information systems through an Internet Home Page; (6) develops strategies and operational systems for the proactive dissemination of effective findings and their implications for prevention partners and the public; (7) apart from the clearinghouses, hotlines, or other contractual mechanisms, responds to public inquiries and distributes information materials; (8) provides editorial, graphics, and publishing services for NCEH/ATSDR staff; (9) operates a NCEH/ATSDR Information

Center; (10) maintains liaison with CDC public affairs and communications staff offices; (11) provides publications-related activities including editing, preparing articles and drafting news releases, distributing publications, and bibliographic services; and (12) provides public relations and publication-related activities.

Delete the title and functional statement for the *Office of Planning, Evaluation, and Legislation (CN13)* and insert the following:

Office of Policy, Planning, and Evaluation (CN13). (1) Coordinates, develops, recommends and implements strategic planning and tracking for NCEH/ATSDR; (2) develops and manages an evaluation program to ensure adequacy and responsiveness of NCEH/ATSDR activities; (3) participates in reviewing, coordinating, and preparing legislation, briefing documents, Congressional testimony, and other legislative matters; (4) maintains liaison and coordinates with other Federal agencies for program planning and evaluation; (5) assists in the development of NCEH/ATSDR budget and program initiatives; (6) provides liaison with staff offices and other officials of CDC; (7) monitors and prepares reports on health-related activities to comply with provisions of relevant legislation; (8) coordinates the development, review, and approval of Federal regulations, Federal Register announcements, request for OMB clearance, and related activities; (9) develops and strengthens strategic partnerships with key constituent groups; and (10) facilitates communication between NCEH/ATSDR and its partners.

Delete the title and functional statement for the *Office of Program Operations and Management (CN14)* and insert the following:

Office of financial and Administrative Services (CN14). (1) Plans, manages, directs, and conducts the administrative and financial management operations of NCEH/ATSDR; (2) reviews the effectiveness and efficiency of administration and operation of all NCEH/ATSDR programs; (3) develops and directs systems for (4) provides and coordinates services for the extramural award activities of (5) formulates and executes the budget; and (6) develops and directs a system for cost recovery.

Delete in their entirety the title and functional statement for the *Emergency Response Coordination Group (CN15).*

Delete in their entirety the title and function statement for the *Information Resources Management Group (CN17).*

Delete in their entirety the title and functional statement for the *Surveillance and Programs Branch (CN73), Division of Environmental Hazards and Health Effects (CN7).*

Delete in their entirety the title and functional statement for the *Risk Assessment and Communication Section (CN745), Radiation Studies Branch (CN74), Division of Environmental Hazards and Health Effects (CN7).*

Delete in their entirety the title and functional statement of the *Lead Poisoning Prevention Branch (CN75), Division of Environment Hazards and Health Effects (CN7).*

After the functional statement for the *Air Pollution and Respiratory Health Branch (CN76),* insert the following:

Environmental Health Tracking Branch (CN78). (1) Coordinates development of training, capacity, and infrastructure to support and sustain the national environment public health tracking network; (2) develops and maintains quality partnerships with key stakeholders; (3) facilitates communication and coordination of environmental public health tracking activities across and within health and environmental agencies; (4) facilitates and conducts scientific activities for environmental public health tracking; (5) disseminates, communicates, and promotes use of environmental public health tracking information to diverse audiences; and (6) conducts continuous quality improvement for environmental public health tracking activities.

Delete in their entirety the title and functional statement for the *Biometry Branch (CN77), Division of Environmental Hazards and Health Effects (CN7).*

After the functional statement for the *Division of Laboratory Sciences (CN8),* insert the following:

Division of Emergency and Environmental Health Services (CN9). (1) Provides national and international leadership for the coordination, delivery, and evaluation of emergency and environmental health services, with emphasis on uniquely exposed or susceptible populations; (2) ensures the participation and involvement of the public and other stakeholders in the Division's programs, as appropriate; (3) maintains liaison with, and serves as a primary Federal resource for, emergency and environmental health service delivery to Federal, state, and local agencies; national, international, and private organizations; and academic institutions; (4) works in collaboration with other NCEH Divisions and CIOs throughout CDC to respond to, and where designated, coordinate PHS activities associated with international complex humanitarian emergencies, and with emergency response to technological and environmental disasters; (5) serves as the national focus for conducting cruise-line vessel sanitation inspections and maintaining sanitation standards including conducting diarrheal disease surveillance and disease outbreak investigations on vessels; (6) coordinates the reviews of Federal Environmental Impact Statements for HHS; (7) serves as the HHS and CDC focus for ensuring public health protection associated with chemical demilitarization processes and activities conducted by the Department of Defense and its contractors; (8) plans, develops, implements, and evaluates training programs, workshops, technical manuals and guidelines, and model standards to strengthen the technical capacity of environmental health practitioners in constituent agencies and organizations; (9) serves as the lead agency for coordinating efforts designed to achieve national program objectives and performance standards related to the elimination and prevention of childhood lead poisoning; and (10) coordinates Division activities with other CDC organizations and HHS agencies, as appropriate.

Office of the Director (CN91). Plans, directs and manages the activities of the Division.

Environmental Public Health Readiness Branch (CN92). (1) Serves as the HHS and CDC focus for chemical demilitarization-related activities; (2) conducts reviews of Department of Defense (DOD) chemical demilitarization plans, calling on appropriate experts within and outside PHS; (3) reviews air monitoring and analytical plans and performance for demilitarization of chemical weapons; (4) ensures that adequate provisions are made for public health and worker safety during chemical demilitarization activities; (5) coordinates with DOD agencies and state and local health and environmental agencies activities concerning chemical demilitarization plans and operations, including the evaluation of medical readiness; (6) performs site visits prior to, and during, chemical demilitarization operations; (7) reviews and provides relevant public health information to health professionals and the public, and ensures the participation and involvement of the public and other stakeholders, as appropriate; (8) reviews on-site emergency response plans for chemical demilitarization activities; (9) coordinates the reviews of Federal Environmental Impact Statements for HHS; (10) coordinates Branch activities through the Division and other CDC

organizations; other Federal, state, and local government agencies; and other public and private organizations, as appropriate; (11) provides public health guidance and resources based on scientific evidence to state, local and international public health departments so that they may prepare and respond to the environmental public health impact caused by intentional or unintentional events; (12) develops capacity within the states to integrate new and existing epidemiologic and scientific principles into operational and programmatic expertise in emergency preparedness; (13) identifies and shares best practices from all academic and operational fields to develop appropriate technical assistance for state and local departments of health for all-hazards preparedness and response; (14) works in collaboration with other NCEH Divisions and CIOs throughout CDC to respond to, and, where designated, provide technical assistance on PHS activities associated with emergency response to technological and environmental disasters; (15) provides technical assistance, as appropriate, on health consultations and assistance in the medical care and testing of exposed individuals to private or public health care providers in cases of public health emergencies; (16) serves as the focal point for technical assistance related to the development of contingency plans, training, and operational liaison activities with other agencies and response teams engaged in emergency responses; and (17) develops, implements, and manages programs to enhance the emergency response readiness of CDC and other national, regional, state, local, and international public health organizations.

Environmental Health Services Branch (CN93). (1) Develops methods and conducts activities to ensure the translation of new technology and prevention research findings into prevention and control programs and activities at the state and local levels; (2) develops, implements, and evaluates training programs and workshops, and develops model performance standards to strengthen professional competency among environmental health practitioners at the state and local levels; (3) develops technical guidelines and model standards for environmental health program areas addressed at the state and local levels; (4) supports state and local environmental health programs through information exchange, direct technical assistance, and evaluation of existing programs; (5) supports the professional development of environmental health practitioners through collaboration with undergraduate and graduate schools of public and environmental health, state and local health agencies, and others; and (6) promotes and assists in the determination and investigation of environmental antecedents and solutions to disease problems.

International Emergency and Refugee Health Branch (CN94). (1) Coordinates, supervises, and monitors, as appropriate, CDC responses to international complex humanitarian emergencies as requested by other U.S. government agencies, United Nations agencies, and non-governmental organizations; (2) provides direct technical assistance to emergency-affected populations in the field, focusing on rapid health and nutrition assessments, public health surveillance, epidemic investigations, communicable disease prevention and control, and program evaluation; (3) develops and implements operational research projects aimed at developing more effective public health and nutrition interventions in emergency-affected populations; (4) plans, implements, and evaluates training courses and workshops to help strengthen CDC technical capacity in emergency public health of CDC, as well as that of other U.S. government agencies, international and private voluntary organizations, and schools of public health; (5) develops technical guidelines on public health issues associated with international complex humanitarian emergencies; and (6) serves as a WHO collaborating center and provides technical liaison with other international, bilateral, and non-governmental relief organizations involved with international complex humanitarian emergencies.

Vessel Sanitation Branch (CN95). (1) Conducts comprehensive sanitation inspections on vessels that have a foreign itinerary, call on U.S. ports, and carry 13 or more passengers; (2) ensures and coordinates epidemiologic investigations of diarrheal disease outbreaks occurring aboard vessels within the Branch's jurisdiction; (3) conducts ongoing surveillance of diarrheal diseases reported on vessels under the Branch's jurisdiction; (4) plans, implements, and evaluates sanitation training courses and workshops to help strengthen the technical capacity of shipboard management personnel; (5) reviews plans for vessel renovations and new vessel construction, and conducts construction inspections; (6) disseminates information on vessel sanitation inspections and other related information to the traveling public; and (7) provides direct technical assistance to cruise lines, other U.S. government agencies, foreign governments, and others on the development and maintenance of vessel sanitation standards and policies.

Lead Poisoning Prevention Branch (CN96). (1) Establishes goals and objectives for a national lead poisoning prevention program for CDC, with emphasis on childhood lead poisoning prevention; (2) works with the U.S. Department of Housing and Urban Development, U.S. Environmental Protection Agency, and other Federal agencies to develop and implement an integrated national program to eliminate childhood lead poisoning; (3) provides consultation and assistance to Federal agencies, State and community health agencies, and others, in planning, developing, and evaluating childhood lead poisoning prevention programs; (4) develops, conducts, and evaluates epidemiologic research on childhood lead poisoning, its causes, geographic distribution, trends and risk factors; (5) assists State and local government agencies as well as the international community, by providing epidemiologic assistance for special studies and investigations; (6) develops and maintains a system for the collection and dissemination of information on program issues, research findings and health communications related to program activities; (7) develops and helps implement, in concert with other Federal agencies, national organizations, and other appropriate groups, a training agenda for health professionals and workers in childhood lead poisoning prevention activities; (8) serves as the lead agency for coordinating efforts designed to achieve national program objectives and performance standards related to the prevention of childhood lead poisoning; (9) coordinates Branch activities through the Division with other components of CDC, other Federal, State, and local government agencies; and other public and private organizations, as appropriate; and (10) provides support to the Advisory Committee on Childhood Lead Poisoning Prevention in planning meetings, staffing members, drafting policy statements, and developing an agenda of issues to be addressed by the Committee.

Dated: December 16, 2003.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–31906 Filed 12–31–03; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organizations, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 68 FR 65935–37, dated November 24, 2003) is amended to reorganize the Office of Analysis, Epidemiology, and Health Promotion and the Office of Information Technology and Services, National Center for Health Statistics.

Section C–B, Organization and Functions, is hereby amended as follows:

After the functional statement for the *Office of Research and Methodology (CS13)*, insert the following:

Office of Information Services (CS14). The Office of Information Services (OIS) plans and administers complex information services production and dissemination systems for promoting access to, use and value of, health statistics data to Government officials, health organizations, researchers, and academia. (1) Plans, directs, coordinates and evaluates the information services program of the Center; (2) develops standards for information services production and dissemination; (3) conducts a technologically enhanced information services program utilizing state-of-the-art advancements in Internet and external Web-based products and services; (4) coordinates information services with other NCHS divisions and programs to meet Center goals effectively; (5) conducts research to improve methods and operations of information production and dissemination programs, emphasizing Web-based services; (6) designs, develops, and implements state-of-the-art systems for information production and dissemination, emphasizing Web-based systems; (7) provides technical assistance, consultation, and liaison to NCHS, CDC, DHHS, and outside private, domestic, and international organizations on information services programs and services which improve the access to, use, and availability of health statistics data for analysis; (8) promotes the integration of health statistics data information systems; and (9) develops and sustains collaborative partnerships within NCHS, CDC, DHHS, and externally with public, private, domestic, and international entities on health information services programs.

Office of the Director (CS141). (1) Provides leadership for the development, conduct, and evaluation of the national health statistics information services program; (2) directs, plans, and coordinates the health information dissemination and information production activities of the Division; (3) develops and administers a research and analytic program to improve the delivery of information services to constituents; (4) determines the most effective mix to provide the Center cost-effective and timely information dissemination, publications, and Internet/Extranet services using in-house and contractor-based resources; (5) provides technical assistance regarding data and information dissemination, publications and Internet services to Federal, State, local, public, and private organizations; and (6) leads development of collaborative partnerships within NCHS, CDC, and DHHS and externally with public, private, domestic, and international entities on health information services and the manner in which health statistics data may be accessed by users.

Information Dissemination Staff (CS142). (1) Plans, directs, and coordinates the health statistics information dissemination program for the National Center for Health Statistics; (2) designs, develops, and implements systems to disseminate and promote the use of NCHS data and information products; (3) manages a broad program of electronic dissemination activities using cutting-edge tools such as the Internet, extranet, CD–ROM, and other media; (4) develops and promotes the dissemination of a wide range of other information materials, including brochures, fact sheets, and exhibits to reach general and specialized audiences; (5) develops standards and policies for formatting and organizing electronic data and information products including micro-data, Listserv, publications, Web-only data releases, fact sheets and other dissemination tools; (6) coordinates with NCHS programs to identify, develop, produce, disseminate and market a range of printed and electronic information materials designed to meet user needs; (7) develops and sustains relationships with Federal, State, and local agencies, the scientific and research community, libraries, and national and international health organizations which foster access to and use of NCHS statistical information services; (8) operates a public inquiries program to respond to data and information requests; (9) provides technical assistance to users in acquiring and using NCHS data and information products; (10) conducts and participates in conferences, seminars, workshops, and exhibits to present the information and data of NCHS; (11) evaluates the presentation and dissemination of NCHS information; (12) conducts user surveys to determine users needs and translates these needs into NCHS product development and dissemination plans; (13) researches, evaluates, develops, and implements improved methods of information dissemination; (14) manages the inventory and storage of NCHS information products; and (15) deeps abreast of Federal information dissemination policies and programs.

Information Design and Publishing Staff (CS143). (1) Plans, directs, and conducts the NCHS information publishing program; (2) develops, recommends, and implements policies and standards for electronic and printed publishing at NCHS; (3) provides consultation and technical assistance to NCHS programs regarding publication policies, operational procedures, presentation techniques, and graphic services; (4) interprets and applies CDC standards and provides input to CDC officials regarding issues unique to the design and production of NCHS electronic and printed materials; (5) researches and adopts emerging technology to improve timeliness, cost-savings, and quality of electronic and printed products; (6) directs, coordinates, and provides liaison between NCHS and other agencies on joint information design and publishing projects; (7) provides design, editing, technical writing, and production support for all NCHS published products, including the NCHS Web site; (8) plans, designs, produces, monitors, and administers the NCHS Web site; (9) develops specifications, sets standards, coordinates, and produces NCHS reports; (10) provides graphic and multimedia design services for all NCHS programs; (11) prioritizes, coordinates, and controls all NCHS electronic publications and print products; (12) establishes, administers, and monitors contracts to provide editing, technical writing, graphic support, and printing services for NCHS; and (13) plans, develops and implements systems for tracking production of NCHS electronic information products, printed publications, and graphic products to insure timely releases.

After the functional statement for the *Classifications and Public Health Data*

Standards Staff (CS18), insert the following:

Office of Information Technology (CS19). (1) Directs, plans and coordinates information technology services for NCHS; (2) serves as the focal point for Information Technology research activities for NCHS-wide systems and in that capacity represents NCHS in developing technology partnerships with other agencies, both public and private; (3) maintains knowledge of strategic business processes in the private and public sector, and leads the development of Information Technology Policy planning for NCHS; (4) provides for the development and implementation of the Information Technology Plans for NCHS and directs the maintenance of the information technology architecture of NCHS; (5) serves as the focal point for the NCHS Information Technology Advisory Board and its working groups and serves as a clearinghouse for IT information on issues under consideration by the Board; (6) conducts applied research studies on existing and emerging information technologies and methodologies, and their applicability to NCHS critical business needs; (7) provides IRM policy coordination for the Center and systems contract support; (8) represent NCHS to other public and private health agencies, foundations and statistical agencies on Information Technology activities; (9) provides software consultation, data base management, research, design, and support services needed by NCHS survey, registration and administrative systems, emphasizing projects which are not program specific; (10) plans, coordinates and conducts the NCHS computer training activities to enhance the use of information technologies and methodologies by Center staff; (11) manages and administers contracts for Center-wide emerging information technology services; and (12) actively participates with state, national and international agencies, associations, foundations and working groups involved in emerging technologies to enhance the IT environment between NCHS and its partners.

Office of the Director (CS191). (1) In partnership with NCHS programs, devises IT practices and procedures and provides direction, planning and evaluation for overall information technology services and infrastructure at NCHS; (2) identifies needs and makes recommendations for procurement of technology and services to support NCHS activities; (3) evaluates and recommends new information technology software and methods in support of NCHS programs; (4) serves as the primary point of contact in NCHS to represent the Center's IT infrastructure services needs to the CDC Information Technology Services Office (ITSO); (5) develops and administers an annual planning process to identify all requirements of NCHS programs for new IT Infrastructure products and services; (6) maintains close collaboration with the CDC ITSO and coordinates capital planning and business case development for NCHS IT investments; (7) provides continuous evaluation of the NCHS IT program to certify adherence to all HHS Enterprise Architecture and CDC IT infrastructure policies, and technical standards; (8) provides technical assistance and information exchange services regarding NCHS information technology activities to Federal, State and local, public and private organizations; and (9) represents NCHS at national and international meetings regarding emerging information technologies and methodologies.

Software Solutions and Engineering Staff (CS192). (1) Conducts and evaluates studies on emerging software technologies and methodologies for NCHS as input to the IT and IRM planning process and serves as a clearinghouse on these emerging technologies for NCHS; (2) provides consulting and software life-cycle development support for NCHS business process re-engineering activities; (3) develops information systems to monitor and evaluate the implementation of the CDC provided IT infrastructure components and contracts to ensure that NCHS programs receive all services in accordance with negotiated Service Level Agreements (SLA); (4) partners with NCHS programs, outside agencies and the States, to pilot the application of new software technologies and methodologies to meet evolving business needs; (5) manages and administers contractual services for software consulting, design, development, and integration of innovative technologies at NCHS; (6) partners with NCHS programs and the States to evaluate and support the application of emerging technologies and data conversion activities related to data dissemination services and products inclusive of automated data access systems on the Internet, CD–ROM and other data storage and retrieval media; (7) conducts and evaluates feasibility studies on new technologies to support IT training; (8) develops, manages, procures and implements the NCHS IT training program; and (9) coordinates IT user groups.

Delete in its entirety the title and functional statement for the *Office of Information Technology and Services (CS3).*

Delete in its entirety the title and functional statement for the *Office of Analysis, Epidemiology, and Health Promotion (CS4)* and insert the following:

Office of Analysis and Epidemiology (CS4). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) plans, directs, and coordinates the Analysis and Epidemiology Program of the Center; (3) develops policy for the Analysis and Epidemiology Program of the Center; (4) conducts developmental and evaluation research and analysis in the areas of epidemiology, health status, health services utilization, health promotion, and health economics; (5) provides operating liaison with other programs of the Center, CDC, the Department and other public and private health agencies on activities related to analysis, epidemiology, and health promotion; (6) provides consultation and technical assistance to Federal agencies, states, and other public and private sector institutions on the analysis and interpretation of national health statistics; and (7) augments the policy analysis activities of CDC.

Delete in their entirety the title and functional statements for the *Division of Epidemiology (CS44)* and the *Division of Health and Utilization Analysis (CS45).*

Delete in their entirety the title and functional statement for the *Division of Health Promotion Statistics (CS46)* and insert the following:

Health Promotion Statistics Branch (CS46). (1) Develops policies, plans, and strategies for the implementation of surveillance and data systems in support of the Department's health promotion and disease prevention objectives; (2) coordinates the health promotion and disease prevention related data collection activities of the Center; (3) serves as liaison with the Department's Office of Disease Prevention and Health Promotion; (4) provides support and technical assistance to state and local health agencies in the areas of statistical assessment and the use of data for policy development and program planning; (5) coordinates Center activities that assess the progress on the elimination of health disparities; (6) establishes consensus-building processes involving CDC, the Department, state and local agencies, and the private sector to identify

priority data gaps on national health promotion objectives and recommends solutions to fill these gaps; and (7) designs, develops, and implements computer data processing systems and software and produces statistical data for analysis.

Aging and Chronic Disease Statistics Branch (CS47). (1) Conducts methodological research and epidemiological analysis of significant public health problems including the etiology and sequela of chronic disease incidence and prevalence, aging, and functional limitation; (2) develops and conducts a comprehensive research program on the health and health care of the aging population; (3) conducts methodological research and analysis focused on the relationship between demographic, social, and biological factors, health care, and chronic disease and aging; (4) collaborates with and provides consultation and technical assistance to other agencies in the collection, analysis, interpretation and dissemination of data on mortality, morbidity, and chronic disease and issues related to the aging population; and (5) prepares research and analytic reports for publication and dissemination.

Infant, Child and Women's Health Statistics Branch (CS48). (1) Using statistical data from multiple sources, develops and conducts a comprehensive research program on infant, child and women's health; (2) conducts methodological research on the relationship on social and biological factors during pregnancy, infancy, and early childhood to mortality and morbidity and on the multiple factors influencing women's health; (3) provides operational liaison with programs of other public and private agencies involved with the development and advancement of health programs aimed at the prevention of infant mortality and morbidity and the promotion of women's health; (4) provides consultation and technical assistance to other agencies in the collection, analysis and interpretation of data on women's health and on perinatal morbidity and mortality; and (5) prepares research and analytic reports for publication and dissemination.

Special Projects Branch (CS49). (1) Plans, directs, and manages the Center's multi-faceted methodological research program on major public health issues including disability, injury statistics and data linkage and sample tracking; (2) develops and coordinates an integrated Center-wide research plan on the epidemiology of injury, including methodological research on injury classification; (3) provides leadership for the coordination of international activities aimed at improving the quality and reliability of international statistics related to injury; (4) develops and coordinates an integrated Center-wide research plan on disability statistics including methodological research on disability measurement; (5) provides leadership for the coordination of national and international activities on disability questionnaire design and data analysis; (6) develops and executes tracking and record-linkage activities that trace and collect additional information for respondents to the Center's cross-sectional health surveys; and (7) develops, plans, and implements studies evaluating the Center's linkage projects.

Analytic Studies Branch (CS4A). (1) Serves as a focal point for a Center-wide analytical program aimed at the assessment and development of health data from multiple sources designed to facilitate the analysis of emerging public health issues and problems; (2) conducts and coordinates in-depth statistical analyses of special population groups relating to their health characteristics and their health care needs; (3) coordinates preparation of the Secretary's annual report, Health, United States, on the health status of the Nation to the President and the Congress in compliance with Section 308 of the PHS Act and other recurring and special reports requested by the Department; (4) provides leadership and expertise in the application of sophisticated statistical techniques related to the problem of integrating and analyzing data from diverse sources; (5) conducts research on the economic aspects of health status and health services; and (6) prepares research and analytical reports for publication and dissemination.

Dated: December 16, 2003.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 03–31908 Filed 12–31–03; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Contract Review—REDS—11–RFP.

Date: January 21–22, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Chitra Krishnamurti, Ph.D., Scientific Review Administrator, Review Branch, Room 7206, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0398.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–32302 Filed 12–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Virus Structure & Assembly.

Date: January 20, 2004.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Clayton C. Huntley, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–2570, *ch405t@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Biodefense and Emerging Infectious Disease Research Opportunities.

Date: January 20, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Clayton C. Huntley, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–2570, *ch405t@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Biodefense and Emerging Infectious Disease Research Opportunities.

Date: January 21, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Clayton C. Huntley, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–2570, *ch405t@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Biodefense and Emerging Infectious Disease Research Opportunities.

Date: January 22, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Clayton C. Huntley, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–2570, *ch405t@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–32304 Filed 12–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for Type 1 diabetes. The outcome of the evaluation will be a decision whether NIDDK should support the request and make available contract resources for development of the potential therapeutic to improve the treatment or prevent the development of Type 1 diabetes and its complications. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Type 1 Diabetes Rapid Access to Intervention Development.

Date: January 23, 2004.

Time: 1 p.m.–5 p.m.

Agenda: To evaluate requests for preclinical development resources for potential new therapeutics for Type 1 diabetes and its complications.

Place: 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dr. Myrlene Staten, Senior Advisor, Diabetes Translation Research, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, NIH, 6707 Democracy Boulevard, Bethesda, MD 20892–5460, (301) 402–7886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 98.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 24, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–32305 Filed 12–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Deafness and Other Communications Disorders Special Emphasis Panel, Studies of Papillomas.

Date: January 28, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Conference Room 514, Rockville, MD 20852.

Contact Person: Sheo Singh, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, (301) 496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 24, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–32306 Filed 12–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel; FIC International Training for Global Health

Date: February 2–3, 2004

Time: February 2, 2004, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Time: February 3, 2004, 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, N.W., Washington, DC 20015.

Contact Person: Hua-Chuan Sim, MD, Scientific Review Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93,337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, National Institutes of Health, HHS)

Dated: December 24, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–32307 Filed 12–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 NNB (04) (M) Neurobiology of Substance Abuse Behavior.

Dated: January 5, 2004.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard Marcus, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301) 435–1245, *richard.marvus@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Haemophilus Influenzae Vaccine.

Dated: January 7, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Diane L. Stassi, Ph.D., Scientific Review Administrator, IDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 435–2514, *stassid@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–32301 Filed 12–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for discussion of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center.

Date: January 30, 2004.

Open: 9 a.m. to 10:45 a.m.

Agenda: For discussion of programmatic policies and issues.

Place: National Institutes of Health, Building 10, 10 Center Drive, 2C116, Medical Board Room, Bethesda, MD 20892.

Closed: 11 a.m. to 12 p.m.

Agenda: For discussion of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Place: National Institutes of Health, Building 10, 10 Center Drive, 2C116, Medical Board Room, Bethesda, MD 20892.

Contact Person: Maureen E Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, (301) 496–2897.

Information is also available on the Institute's/Center's Home Page: *http://www.cc.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: December 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–32303 Filed 12–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the **Federal Register** on April 11, 1988 (53 FR 11970), and revised in the **Federal Register** on June 9, 1994 (59 FR 29908), and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS's National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2, Room 815, Rockville, Maryland 20857; 301–443–6014 (voice), 301–443–3031 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870 (Formerly: Jewish Hospital of Cincinnati, Inc.).

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239–561–8200/800–735–5416.

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713–856–8288/ 800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272 (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 1120 Stateline Rd. West, Southaven, MS 38671, 866–827–8042/ 800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (Formerly: NOVAMANN (Ontario) Inc.).

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 S., Salt Lake City, UT 84124, 801–293–2300/800–322–3361 (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.).

One Source Toxicology Laboratory, Inc., 1705 Center St., Deer Park, TX 77536, 713–920–2559 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891 x8991.

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300 (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152 (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750 (Formerly: Associated Pathologists Laboratories, Inc.).

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories).

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130.

Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828–650–0409.

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Sure-Test Laboratories, Inc., 2900 Broad Ave., Memphis, TN 38112, 901–474–6026.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

[*] The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS's NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on June 9, 1994 (59 FR 29908), and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

Patricia Bransford,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–32154 Filed 12–31–03; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–01]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 23, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–32136 Filed 12–31–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1310–PB]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held February 5–6, 2004, at the Anchorage Federal Office Building, located at 7th and C Street, beginning at 8:30 a.m. The public comment period will begin at 1 p.m. February 5.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–3322 or e-mail *tmcphers@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics we plan to discuss include:

- Status of land use planning in Alaska
- National Petroleum Reserve-Alaska (NPR–A) integrated activity plans
- Accelerated land transfer program
- Election of officers
- Other topics the Council may raise

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact BLM.

Dated: December 23, 2003.

Peter J. Ditton,

Acting State Director.

[FR Doc. 03–32246 Filed 12–31–03; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–4]

Certain Ductile Iron Waterworks Fittings From China

Determination

On the basis of information developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 421(b)(1) of the Trade Act of 1974,[1] that certain ductile iron waterworks fittings [2] from the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products (68 FR 69421, December 12, 2003).

Recommendations on Proposed Remedies

Chairman Deanna Tanner Okun, Commissioner Stephen Koplan, Commissioner Charlotte R. Lane, and Commissioner Daniel R. Pearson propose that the President impose a tariff-rate quota on imports of the subject ductile iron waterworks fittings from China as follows: in the first year, a tariff of 50 percent *ad valorem*, in addition to the current rate of duty, on imports over 14,324 short tons; in the second year, a tariff of 40 percent *ad valorem*, in addition to the current rate of duty, on imports that exceed 15,398 short tons; and in the third year of relief, a tariff of 30 percent *ad valorem* on imports that exceed 16,553 short tons. They further recommend that, if applications are filed, the President direct the U.S. Department of Commerce and the U.S. Department of Labor to provide expedited consideration of trade adjustment assistance for firms and/or workers affected by the subject imports.

Vice Chairman Jennifer A. Hillman proposes that the President impose a quota, for a three-year period, on imports of the subject ductile iron waterworks fittings from China as follows: 14,324 short tons in the first year of relief, 15,398 short tons in the second year of relief, and 16,553 short tons in the third year of relief.

Commissioner Marcia E. Miller proposes that the President impose a duty, in addition to the current rate of duty, for a three-year period, on imports of the subject ductile iron waterworks fittings from China as follows: 50 percent *ad valorem* in the first year of relief, 40 percent *ad valorem* in the second year of relief, and 30 percent *ad valorem* in the third year of relief.

Background

Following receipt of a petition, on September 5, 2003, on behalf of McWane, Inc.,[3] Birmingham, AL, the Commission instituted investigation No. TA–421–4, *Certain Ductile Iron Waterworks Fittings from China*, under section 421(b) of the Act to determine whether certain ductile iron waterworks fittings from China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products. The petition also alleged under section 421(i)(1)(A) of the Act, that critical circumstances exist with respect to imports of the subject product from China, and on October 20, 2003, the Commission made a negative determination [4,5] with respect to whether delay in taking action under this section would cause damage to the relevant domestic industry which would be difficult to repair (68 FR 61013, October 24, 2003).

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing to be held in connection therewith was given by posting a copy of the notice on the Commission's Web site (*http://www.usitc.gov*) and by publishing the notice in the **Federal Register** of September 15, 2003 (68 FR 54010). The hearing was held on November 6, 2003 in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The views of the Commission are contained in USITC Publication 3657 (December 2003), entitled *Certain Ductile Iron Waterworks Fittings from China: Investigation No. TA–421–4*.

Issued: December 24, 2003.

[1] 19 U.S.C. 2451(b)(1).

[2] The products subject to this investigation are cast pipe or tube fittings of ductile iron (containing 2.5 percent carbon and over 0.02 percent magnesium or magnesium and cerium, by weight) with mechanical, push-on (rubber compression) or flanged joints attached. Included within this definition are fittings of all nominal diameters and of both full-bodied and compact designs. The imported products are provided for in statistical reporting number 7307.19.3070 of the Harmonized Tariff Schedule of the United States (HTS).

[3] McWane operates three subsidiaries that produce the subject products including: Clow Water Systems Co., Coshocton, OH; Tyler Pipe Co., Tyler, TX; and Union Foundry Co., Anniston, AL.

[4] Commissioner Lane made an affirmative critical circumstances determination.

[5] Commissioner Pearson did not participate in the critical circumstances determination.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–32259 Filed 12–31–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–167 (Review)]

Pressure Sensitive Plastic Tape From Italy

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping finding on pressure sensitive plastic tape from Italy.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping finding on pressure sensitive plastic tape from Italy would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is February 23, 2004. Comments on the adequacy of responses may be filed with the Commission by March 16, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://www.edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On October 21, 1977, the Department of the Treasury issued an antidumping finding on imports of pressure sensitive plastic tape from Italy (42 FR 56110). Following five-year reviews by Commerce and the Commission, effective February 17, 1999, Commerce issued a continuation of the antidumping duty order on imports of pressure sensitive plastic tape from Italy (64 FR 51515, September 23, 1999). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Italy.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its expedited five-year review determination, the Commission found that the appropriate definition of the Domestic Like Product was the same as Commerce's scope: Pressure sensitive plastic tape measuring over 1⅜ inches in width and not exceeding 4 mils in thickness. The Commission did not make a like product determination per se in its original determination.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined the Domestic Industry as all producers of pressure sensitive plastic tape.

(5) The Order Date is the date that the antidumping duty order or finding under review became effective. In this review, the Order Date is October 21, 1977.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. Former employees may seek informal advice from Commission ethics officials concerning their eligibility to appear in five-year reviews. However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–078, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 23, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is March 16, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping finding on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1997.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in square yards and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in square yards and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in square yards and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1997, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: December 22, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–32298 Filed 12–31–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–188 (Review)]

Prestressed Concrete Steel Wire Strand From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping finding on prestressed concrete steel wire strand from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping finding on prestressed concrete steel wire strand from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is February 23, 2004. Comments on the adequacy of responses may be filed with the Commission by March 16, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1978, the Department of the Treasury issued an antidumping finding on imports of prestressed concrete steel wire strand from Japan (43 FR 57599). Following five-year reviews by Commerce and the Commission, effective February 3, 1999, Commerce issued a continuation of the antidumping duty order on imports of prestressed concrete steel wire strand from Japan (64 FR 40554, July 27, 1999). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its expedited five-year review, the Commission found that the appropriate definition of the Domestic Like Product was the same as Commerce's scope: all steel wire strand, other than alloy steel, not galvanized, which has been stress-relieved and is suitable for use in prestressed concrete. The Commission did not make a like production determination *per se* in its original determination.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review, the Commission defined the Domestic Industry as producers of prestressed concrete steel wire strand.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–079, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

(5) The *Order Date* is the date that the antidumping duty order or finding under review became effective. In this review, the Order Date is December 8, 1978.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. Former employees may seek informal advice from Commission ethics officials concerning their eligibility to appear in five-year reviews. However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 23, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is March 16, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to This Notice of Institution

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping finding on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandiseon the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1997.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1997, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (*Optional*) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: December 22, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–32299 Filed 12–31–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–045]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATES: January 9, 2004 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1058 (Preliminary) (Wooden Bedroom Furniture from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before January 12, 2004; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before January 20, 2004.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: December 29, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–32316 Filed 12–30–03; 10:29 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–044]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATES: January 8, 2004 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. Agenda for future meetings: none
2. Minutes
3. Ratification List
4. Inv. Nos. 701–TA–432 and 731–TA–1024–1028 (Final) (Prestressed Concrete Steel Wire Strand from Brazil,

India, Korea, Mexico, and Thailand)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before January 21, 2004.)

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: December 29, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–32317 Filed 12–30–03; 10:29 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree, Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

Under 28 CFR 50.7 notice is hereby given that on December 10, 2003, a proposed consent decree in *United States* v. *The City of Corpus Christi*, Civil Action No. C–03–015, has been lodged with the United States District Court for the Southern District of Texas, Corpus Christi Division. The consent decree settles an action brought under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, for reimbursement of response costs incurred by the United States in responding to releases and threats of releases of hazardous substances from the J.C. Elliot Municipal Landfill Site located in Corpus Christi, Texas. Under the terms of the Consent Decree, the City of Corpus Christi has agreed to reimburse response costs incurred by the United States in the amount of $600,000.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *The City of Corpus Christi*, DOJ #90–11–3–07835.

The proposed consent decree may be examined at the offices of the United States Attorney for the Southern District of Texas, Corpus Christi Division, 800 N. Shoreline, Suite 500 Corpus Christi, Texas 78401, and at the office of the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: I-Jung Chiang, Assistant Regional Counsel). During the public comment period, the proposed consent decree may also be examined by the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy exclusive of exhibits, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost without exhibits) payable to the U.S. Treasury.

Catherine McCabe,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–32291 Filed 12–31–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the Department Policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *City of Hastings, Concrete Industries, Inc., Cooperative Producers, Inc., Desco Corporation, Dutton-Lainson Company, Dravo Corporation, and Morrison Enterprises,* Civil Action No. 8:03–351, was lodged with the United States District Court for the District of Nebraska on December 23, 2003.

The Consent Decree resolves claims brought by the United States against the Defendants under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607(a), for the Area-Wide Operable Unit 19 at the Hastings Ground Water Contamination Site, located in Hastings, Nebraska.

The Consent Decree requires the Defendants to implement the interim remedial action for the Area-Wide OU 119 at the Site, pay $2,250,000.00 of past response costs incurred by the United States, and pay all of the United States' future response costs (estimated $175,000.00). Of that, the Settling Federal Agency, U.S. Navy, will pay $205,000, plus 6% of interim costs, estimated to be an additional $12,000. The EPA estimates the interim remedial action will cost $700,000.00. EPA's past costs are $2.626,910.00.

The Department of Justice will receive written comments on the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Hastings, et al.* D.J. Ref. 90–11–2–1112/5.

The Consent Decree may be examined at the Office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, Nebraska, and at U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas. A copy of the Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. When requesting a copy, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''U.S. Treasury'' in the amount of $14.25 (for decree without appendices) or $38.50 (for Decree with appendices) and please reference *United States* v. *City of Hastings, et al.* D.J. Ref. 90–11–2–1112/5.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj. gov)*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–32290 Filed 12–31–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 022–2003]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Justice Management Division (JMD), proposes to modify a system of records entitled ''Department of Justice Payroll System, Justice/JMD–003'', last published in full in the **Federal Register** on April 13, 1999 (64 FR 18054), and modified in the **Federal Register** on September 1, 2000 (65 FR 53225).

The Department proposes to modify the system of records, to make necessary updates and revisions, and to add one new routine use.

In accordance with 5 U.S.C. 552a (e)(4) and (11) the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by February 2, 2004. The public, OMB and the Congress are invited to submit any comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC, 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a (r), the Department has provided a report to OMB and the Congress.

Dated: December 23, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

Justice/JMD–003

SYSTEM NAME:

Department of Justice Payroll System, Justice/JMD–003.

SYSTEM LOCATION:

This system of records is managed by the Department of Justice (DOJ), Justice Management Division (JMD), Director, Personnel Staff, Washington, DC 20530. DOJ has contracted with the Department of Agriculture's National Finance Center (NFC) in New Orleans, Louisiana, 70129, to maintain payroll information and conduct payroll-related activities for its employees. Conversion to the NFC began in July of 1991 and was incrementally completed as of May of 1993. Payroll records in electronic or paper format may be found in the following locations:

a. *Post-Conversion Records:* On a computer maintained by the NFC in New Orleans, Louisiana; and at backup facilities in Philadelphia, Pennsylvania. Relevant data may also be stored on Justice Data Center computers or servers at the DOJ for use in distributing payroll and accounting information to the individual DOJ Bureaus and components. Paper and electronic payroll information may be kept at various time and attendance recording and processing stations around the world. Paper records may be located in the DOJ's Personnel Staff, Washington, DC 20530, in servicing personnel offices throughout the DOJ, and in the offices of employee supervisors and managers.

b. *Pre-Conversion Historical Records:* On magnetic tape at the Justice Data Center in Rockville, Maryland 20854; on microfiche maintained by the DOJ Finance Staff; and in paper format maintained by the DOJ's Finance and Personnel Staffs, servicing personnel offices, and offices of employee supervisors and managers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOJ employees, excluding the Federal Bureau of Investigation (FBI). The FBI employees are scheduled to be included starting in Pay Period 07, 2005.

CATEGORIES OF RECORDS IN THE SYSTEM:

Any and all records essential to the conduct of payroll-related activities. Included may be:

- Personal identifying/personnel data;
- Time and attendance records;
- Leave records;
- Allotment or deduction information such as bonds, garnishments, health benefits, life insurance, Thrift Savings Plan (TSP), and other savings, retirement, and union dues;
- Travel and relocation information;
- Court orders to initiate garnishments;
- Check mailing and Direct Deposit / Electronic Funds Transfer information;
- Tax, withholding, and exemption information;
- Accounting and organization funding information;
- Salary, severance pay, award, and bonus information; active retirement records;
- Former employee pay records;
- Employee death records;
- Returned employee check and canceled salary payment records;
- Indebtedness records, *e.g.*, overpayment of pay or travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5516, 5517, 5520; 26 U.S.C. 6011, 6109; 44 U.S.C. 3101.

PURPOSE(S):

This system of records is maintained to enable the DOJ to administer the payroll and payroll-related functions, and any other related financial matters, in accordance with applicable laws and regulations and the requirements of the General Accounting Office (GAO), the Office of Personnel Management (OPM), and the Federal Retirement Thrift Investment Board (FRTIB). It enables the DOJ to prepare and document payment to all DOJ employees entitled to be paid and to effect all authorized deductions from gross pay; to coordinate pay, leave and allowance operations with personnel functions and other related activities; meet internal and external reporting requirements; support investigations of fraud, the collection of debts, and litigation activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Pursuant to subsection (b)(3) of the Privacy Act, the DOJ may disclose relevant and necessary data as follows:

In accordance with an interagency agreement, as provided for in Office of Management and Budget (OMB) implementing regulations (40 FR 28948), the DOJ may disclose records to the U.S. Department of Agriculture (USDA), National Finance Center (NFC), in order to effect all financial transactions on behalf of the DOJ related to employee pay.

Specifically, the NFC may effect employee pay or deposit funds on behalf of DOJ employees, and/or it may withhold, collect or offset funds from employee salaries as required by law or as necessary to correct overpayment or amounts due. For example, the NFC will routinely make the necessary disclosures to the Treasury Department for the issuance of payments; to Federal, State, and local authorities and the Social Security Administration for tax withholding; to OPM for retirement contributions; and, according to employee directions, to the appropriate financial institutions, charitable organizations, unions, health carriers, or other appropriate entities to effect such pay distributions as savings bonds, charitable contributions, allotments, alimony, child support, union dues, health and life insurance, and TSP contributions. In addition, the NFC will use the data to perform related administrative activities such as to certify payroll vouchers chargeable to DOJ funds; and either to perform or participate in routine audit/oversight operations of USDA/DOJ management and/or of GAO, OMB, OPM, and FRTIB;

and to meet related reporting requirements.

In addition, where determined to be appropriate or necessary, the DOJ may disclose relevant records from this system as follows; or, DOJ may authorize the NFC to make the disclosure:

A. To Federal, State, or local housing authorities to enable these authorities to determine eligibility for low cost housing.

B. To heirs, executors and legal representatives of beneficiaries for estate settlement purposes.

C. To State and local courts of competent jurisdiction for the enforcement of child support, alimony, or both, pursuant to 41 U.S.C. 659.

D. To individuals, organizations, or agencies to enable such person, organization, or agency to determine the identity or location of a current or former Federal employee to collect debts owed, where collection of such debts are authorized (either by statute, implementing regulation, or order issued pursuant thereto) and the individual, organization, or agency, has provided sufficient evidence as will reasonably validate such claims, *e.g.*, where a spouse or creditor seeking to obtain a garnishment of wages for such purposes as alimony and/or child support has provided a court order to substantiate the indebtedness. Information relevant to the request for such garnishment may include informing the individual, organization, or agency of the unavailability of funds where, for example, a currently active garnishment precludes the implementation of a further garnishment.

E. To the Office of Child Support Enforcement (OCSE), Administration for Children and Families, Department of Health and Human Services, any information specifically required by statute or implementing regulation or otherwise determined to be necessary and proper for OCSE's use (as outlined more specifically in relevant OCSE published Privacy Act systems of records) in locating individuals owing child support obligations, and in establishing and collecting child support obligations from such individuals, including enforcement action. Information disclosed may include: name, address, date of birth, date of hire, duty station, and social security number of the employee; the wages paid to the employee during the previous quarter; and the appropriate address and Federal Employer Identification Number of the Department of Justice.

F. To the appropriate Federal, State, or local agencies, *e.g.*, to state unemployment agencies and/or the Department of Labor, to assist these agencies in performing their lawful responsibilities in connection with administering unemployment, workers' compensation, or other benefit programs; and similarly, to such agencies to obtain information that may assist the Department of Justice in performing its lawful responsibilities as they relate to such benefit programs.

G. To labor organizations recognized under 5 U.S.C. chapter 71, the home addresses or designated mailing addresses of bargaining unit members.

H. Where a record, either on its face or in conjunction with other information indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, State, local, foreign, or tribal, law enforcement authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

I. To the Internal Revenue Service (IRS) to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

J. To a person or organization with whom the head of the agency has contracted for collection services to recover indebtedness owed to the United States. Addresses of taxpayers obtained from the IRS will also be disclosed, but only where necessary to locate such taxpayer to collect or compromise a Federal claim.

K. To a Federal, State, local, or foreign agency or to an individual or organization if there is reason to believe that such agency, individual, or organization possesses information relating to the debt, the identity or location of the debtor, the debtor's ability to pay, or relating to any other matter which is relevant and necessary to the settlement, effective litigation and enforced collection of the debt, or relating to the civil action trial or hearing, and the disclosure is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an agency.

L. To employers to effect salary or administrative offsets to satisfy a debt owed the United States by that person; or when other collection efforts have failed, to the IRS to effect an offset against an income tax refund otherwise due.

M. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

N. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, an individual who is the subject of the record.

O. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

P. In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator holds the records to be relevant to the proceeding.

Q. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

R. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

S. To a former employee of the Department for purposes of: responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

Consistent with the foregoing routine use provisions, the Department may disclose records from this system of records for use in a computer matching program (as defined in the Privacy Act, 5 U.S.C. 552a (a)(8)). In accordance with the requirements of the Privacy Act, the public will be given advance notice in the **Federal Register** of the Department's participation in any such computer matching program(s).

In addition to the above routine use disclosures under subsection (b)(3) of

the Privacy Act, the DOJ may make relevant and necessary disclosures as permitted by other Privacy Act disclosure provisions.

Finally, 31 U.S.C. 3711 requires that the notice required by the Privacy Act at 5 U.S.C. 552a (e)(4) must indicate that information in the system may be disclosed to a consumer reporting agency pursuant to subsection (b)(12). Such notice is provided as follows:

Notice of Disclosure to Consumer Reporting Agencies Under Subsection (b)(12) of the Privacy Act: Records relating to the identity of debtors and the history of claims may be disseminated to consumer reporting agencies to encourage payment of the past-due debt. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt.

(Any disclosures that may be made for debt collection purposes, whether made pursuant to subsection (b)(3) or (b)(12) of the Privacy Act, would be made only when all the relevant due process or procedural steps established by the relevant statutes and implementing regulations have been taken.)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on disks, magnetic tapes, microfiche, paper, and direct access storage device (DASD).

RETRIEVABILITY:

Records are retrieved by name or social security number.

SAFEGUARDS:

Access to premises where records are stored is restricted via building passes and security guards. Access to all records is supervised and restricted to those employees with a need to know. In addition, access to computerized records is protected by encryption, password, and appropriate user ID's. Access to terminals is limited to persons with terminal identification numbers. These numbers are issued only to employees who have a need to know in order to perform job functions relating to personnel and payroll matters.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Records Schedule No. 2 issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Staff, Justice Management Division, Department of Justice, National Place Building, Room 1110, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

The individual may address inquiries to the servicing personnel office of the Department component(s) by which he/she is or was employed. Address of Department components may be found in Appendix I, to part 16 of 28 Code of Federal Regulations. Updated listings are available on the DOJ Web site on the Internet (*http://www.usdoj.gov/*). The individual may also address his/her request to the System Manager named above.

RECORD ACCESS PROCEDURE:

A request for access to a record must be made in writing to the System Manager named above, with the envelope and letter clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought. Include in the request the full name of the requester, his or her current address, and date and place of birth, with notarized signature or dated signature submitted under penalty of perjury (28 CFR 16.41(d)).

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment, such as tax return information.

RECORD SOURCE CATEGORIES:

Individuals covered by the system; agency records; financial institutions or employee organizations; previous Federal employers; consumer reporting agencies; debt collection agencies; and the courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–32292 Filed 12–31–03; 8:45 am]

BILLING CODE 4410–CP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 12, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 12, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 19th day of December 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted Between 12/08/2003 and 12/12/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
53,729	Adhesive Technologies, Inc. (Comp.)	Hampton, NH	12/08/2003	12/08/2003
53,730	McData Corp. (State)	Broomfield, CO	12/08/2003	12/08/2003
53,731	Industrial CAD Services, Inc. (Comp.)	Kannapolis, NC	12/08/2003	12/08/2003
53,732	ISM Fastening Systems (Wkrs.)	Herrin, IL	12/08/2003	12/08/2003
53,733	Coleman Company (The) (Comp.)	Lake City, SC	12/08/2003	12/08/2003
53,734	Arvin Meritor (Comp.)	Franklin, IN	12/08/2003	12/08/2003
53,735	Phillips Plastics Corporation (Wkrs.)	Eau Claire, WI	12/08/2003	12/08/2003
53,736	King Products (Comp.)	Los Angeles, CA	12/08/2003	12/08/2003
53,737	Tibbetts Industries, Inc. (Comp.)	Camden, ME	12/08/2003	12/08/2003
53,738	Aaden Aaberg (Comp.)	Anchorage, AK	12/08/2003	12/08/2003
53,739	Kentucky Derby Hosiery (Wkrs.)	Mt. Airy, NC	12/08/2003	12/08/2003
53,740	Unisys Corporation (Wkrs.)	Charlootte, NC	12/08/2003	12/08/2003
53,741	Cone Mills Corp. (Comp.)	Salisbury, NC	12/09/2003	11/18/2003
53,742	Delphi Automotive Systems (IUE)	Moraine, OH	12/09/2003	12/04/2003
53,743	Plastics Engineering Co. (Comp.)	Sheboygan, WI	12/09/2003	12/03/2003
53,744	Lands' End, Inc. (Comp.)	Elkader, IA	12/09/2003	11/25/2003
53,745	Phillips Plastics Corp. (Wkrs)	Eau Claire, WI	12/09/2003	12/04/2003
53,746	All Service Plastic Molding, Inc. (Comp.)	Clay City, KY	12/09/2003	11/12/2003
53,747	Kmart Corporation (Wkrs)	Clinton, NC	12/09/2003	11/15/2003
53,748	Motorola (Wkrs)	Rockford, IL	12/09/2003	12/01/2003
53,749	U.S. Tsubaki, Inc. (Comp.)	Bennington, VT	12/09/2003	12/02/2003
53,750	Allflex USA, Inc. (Wkrs)	Dallas, TX	12/09/2003	11/14/2003
53,751	United States Postal Service (Wkrs)	Cohoes, NY	12/09/2003	11/23/2003
53,752	Tuscaroria Yarns, Inc. (Comp.)	Mt. Pleasant, NC	12/09/2003	12/08/2003
53,753	Citation Corp. (AFLCIO)	Cambden, TN	12/09/2003	12/01/2003
53,754	Douglas/Quikut (Wkrs)	Walnut Ridge, AR	12/09/2003	11/05/2003
53,755	Pillowtex Corporation (Wkrs)	New York, NY	12/10/2003	11/21/2003
53,756	Viking Pump (IA)	Cedar Falls, IA	12/10/2003	12/05/2003
53,757	Authentic Fitness Corp. (Wkrs)	Los Angeles, CA	12/10/2003	12/09/2003
53,758	Standard Motor Company (Wkrs)	Argos, IN	12/10/2003	12/08/2003
53,759	Tellabs (Wkrs)	Bolingbrook, IL	12/10/2003	12/09/2003
53,760	Parker Hannifin Corp. (Wkrs)	Tempe, AZ	12/10/2003	12/08/2003
53,761	Amhil Enterprises, Inc. (Wkrs)	Dickson, TN	12/10/2003	12/08/2003
53,762	Good Company/Good Tables (Wkrs)	Carson, CA	12/10/2003	12/08/2003
53,763	Chipsco, Inc. (Wkrs)	Meadville, PA	12/10/2003	11/18/2003
53,764	Traction Motor Transit, Inc. (Wkrs)	W. Mifflin, PA	12/10/2003	12/08/2003
53,765	Caraustar (Wkrs)	Ashland, OH	12/10/2003	12/05/2003
53,766	Network Elements, Inc. (OR)	Beaverton, OR	12/11/2003	12/09/2003
53,767	Vermilion Rubber Technology (IBT)	Danville, IL	12/11/2003	12/01/2003
53,768	Kurz-Hastings, Inc. (IBT)	Philadelphia, PA	12/11/2003	12/09/2003
53,769	Textron Fastening Systems (Comp.)	Greensburg, IN	12/11/2003	12/09/2003
53,770	L and Z Tool and Engineering (NJ)	Watchung, NJ	12/11/2003	12/09/2003
53,771	Interlink Tech. dba Homaco (Comp.)	Chicago, Il	12/11/2003	12/09/2003
53,772	Werner Company (Comp.)	Carrollton, KY	12/11/2003	12/09/2003
53,773	Ademco (Comp.)	Syosset, NY	12/11/2003	12/08/2003
53,774	Aneco Trousers Corp. (Comp.)	Hanover, PA	12/11/2003	12/09/2003
53,775	Rexnord Corporation (IAMAW)	Warren, PA	12/11/2003	12/10/2003
53,776	Valeo Engine Cooling, Inc. (Wkrs)	Greensburg, IN	12/11/2003	12/04/2003
53,777	Thermo Electron, Materials and Minerals (Comp.)	San Diego, CA	12/11/2003	12/08/2003
53,778	Geneva Rubber Co. (USWA)	Geneva, OH	12/11/2003	12/09/2003
53,779	National Mills, Inc. (Comp.)	Pittsburg, KS	12/11/2003	12/08/2003
53,780	Teva Pharmaceuticals USA (NJ)	Elmwood Pk., NJ	12/11/2003	12/10/2003
53,781	Bes-Tex Fabrics, Inc. (Comp.)	New York City, NY	12/11/2003	12/01/2003
53,782	Bombardier Motor Corp. of America (Wkrs)	El Paso, TX	12/11/2003	12/09/2003
53,783	Geotrac (Wkrs)	Norwalk, OH	12/11/2003	12/02/2003
53,784	William Carter Co. (Wkrs)	Griffin, GA	12/11/2003	11/28/2003
53,785	Berger Company (Wkrs)	Atchison, KS	12/11/2003	12/04/2003
53,786	Caratron Industries, Inc., (Wkrs)	Warren, MI	12/11/2003	12/02/2003
53,787	ALHU International, Inc. (Comp.)	El Paso, TX	12/11/2003	12/01/2003
53,788	Ohio Valley Alloy Services (Wkrs)	Marietta, OH	12/11/2003	11/14/2003
53,789	Millanwood, Inc.	Barnesville, GA	12/11/2003	12/09/2003
53,790	Snap-Tite (Wkrs)	Erie, PA	12/12/2003	12/04/2003
53,791	TMH/Vanguard (AFLCIO)	Portage, IN	12/12/2003	12/11/2003
53,792	Menasha Forest Products Corp. (OR)	North Bend, OR	12/12/2003	12/09/2003
53,793	Keeler Brass (NJ)	Grand Rapids, MI	12/12/2003	12/02/2003
53,794	Weyerhaeuser (WA)	Cosmopolis, WA	12/12/2003	12/01/2003
53,795	Omniglow Corporation (Comp.)	W. Springfield, MA	12/12/2003	12/11/2003

APPENDIX

[Petitions Instituted Between 12/01/2003 and 12/05/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
53,668	Alice Mfg. Co., Inc. (Comp)	Easley, SC	12/01/2003	11/25/2003
53,669	Interconnect Technologies (Wkrs)	Springfield, MO	12/01/2003	11/26/2003
53,670A	Versailles, Ltd. (Comp)	Brooklyn, NY	12/01/2003	11/18/2003
53,670	Versailles Ltd. (Comp)	New York, NY	12/01/2003	11/18/2003
53,671A	Lasting Impressions, Inc. (Comp)	Brooklyn, NY	12/01/2003	11/18/2003
53,671	Lasting Impressions, Inc. (Comp)	New York, NY	12/01/2003	11/18/2003
53,672	Bombardier Learjet (IAM)	Wichita, KS	12/01/2003	11/24/2003
53,673	S and S Distribution (Wkrs)	Roebuck, SC	12/01/2003	11/20/2003
53,674	American Express Travel (Wkrs)	Nashville, TN	12/01/2003	11/18/2003
53,675	Pincus Brothers Maxwell (UNITE)	Philadelphia, PA	12/01/2003	11/21/2003
53,676	Morton International, Inc. (Comp)	Manistee, MI	12/01/2003	11/19/2003
53,677	Smead Mfg. Company (The) (Comp)	Logan, OH	12/01/2003	11/18/2003
53,678	Foam Tech, Inc. (Comp)	Lexington, NC	12/01/2003	11/19/2003
53,679	General Cable (Comp)	Taunton, MA	12/01/2003	11/20/2003
53,680	U.S. Axle, Inc. (Comp)	Pottstown, PA	12/02/2003	11/28/2003
53,681	Apache Micro Peripherals, Inc. (State)	Irvin, CA	12/02/2003	11/26/2003
53,682	Adams Magnetic Products (State)	Battle Ground, WA	12/02/2003	12/01/2003
53,683	Kirby Manufacturer Co., Inc. (Comp)	Lenoir City, TN	12/02/2003	11/25/2003
53,684	Lempco Industries, Inc. (Union)	New Lexington, OH	12/02/2003	11/21/2003
53,685	TMH (Union)	Portage, IN	12/02/2003	11/21/2003
53,686	Ogg Harding Machine (Comp.)	Lexington, TN	12/02/2003	11/17/2003
53,687	Olympic Wood Products Inc. (Comp.)	Shelton, WA	12/02/2003	11/23/2003
53,688	Elastic Corp. of America, Inc. (Comp)	Woolwine, VA	12/03/2003	11/24/2003
53,689	Washington Mfg. Co., LLC (Comp)	Washington, GA	12/03/2003	11/25/2003
53,690	Learjet, Inc. (AZ)	Tucson, AZ	12/03/2003	11/26/2003
53,691	A.T. Cross Company (Comp)	Lincoln, RI	12/03/2003	11/25/2003
53,692	Schrader-Bridgeport Int'l., Inc. (Comp)	Muskogee, OK	12/03/2003	11/26/2003
53,693	CII/Tyco Electronics (Wkrs)	Guttenberg, IA	12/03/2003	11/25/2003
53,694	Metso Minerals (USWA)	Milwaukee, WI	12/03/2003	11/25/2003
53,695	Continental Teves (Comp)	Asheville, NC	12/03/2003	11/20/2003
53,696	Stinson, Inc. (USWA)	Pittsburgh, PA	12/03/2003	11/25/2003
53,697	Raytheon Aircraft Co. (IAM)	Wichita, KS	12/03/2003	11/19/2003
53,698	Holloway Sportswear, Inc. (Comp)	Simmesport, LA	12/03/2003	11/25/2003
53,699	Tomlinson Industries (Comp)	Cleveland, OH	12/03/2003	11/26/2003
53,700	Spirit Silkskreen (Wkrs)	Irvine, CA	12/03/2003	11/13/2003
53,701	American Uniform Co. (Comp)	Robbinsville, NC	12/04/2003	11/26/2003
53,702	Snap-on, Inc. (IAMAW)	Kenosha, WI	12/04/2003	08/20/2003
53,703	Cone Mills Corp. (Comp)	Greensboro, NC	12/04/2003	12/01/2003
53,704	Lucent Technologies (Wkrs)	Lisle, IL	12/04/2003	11/25/2003
53,705	Vistakon (FL)	Jacksonville, FL	12/04/2003	12/02/2003
53,706	Advance Transformer Co. (Comp)	Chicago, IL	12/04/2003	11/10/2003
53,707	Van Dorn DeMag (Wkrs)	Fountain, SC	12/04/2003	11/24/2003
53,708	Weyerhaeuser (WA)	Sedro Woolley, WA	12/04/2003	12/02/2003
53,709	Alfmeier Corp. (Wkrs)	Dandridge, TN	12/04/2003	11/19/2003
53,710	Southill Industrial Carving (Comp)	Thomasville, NC	12/04/2003	11/25/2003
53,711	United States Postal Service (APWU)	Cohoes, NY	12/04/2003	11/17/2003
53,712	Dan Post Boot Co. (Comp)	Waverly, TN	12/04/2003	12/01/2003
53,713	Exeter Machine (Wkrs)	Lomira, WI	12/04/2003	12/01/2003
53,714	Facemate Corp. (Wkrs)	Chicopee, MA	12/04/2003	12/01/2003
53,715	Verticalnet, Inc. (Wkrs)	Endicott, NY	12/05/2003	11/18/2003
53,716	Hargro Fabrics, Inc. (Wkrs)	New York, NY	12/05/2003	11/24/2003
53,717	Nortel Networks (Wkrs)	Billerica, MA	12/05/2003	11/25/2003
53,718	Brown-Minneapolis Tank (Wkrs)	Orem, UT	12/05/2003	11/11/2003
53,719	Wellpoint Blue Cross Blue Shield of MO. (Wkrs)	Springfield, MO	12/05/2003	11/25/2003
53,720	Teleperformance USA (Wkrs)	Butte, MT	12/05/2003	12/01/2003
53,721	Standard Boiler Works (Wkrs)	Lebanon, PA	12/05/2003	11/14/2003
53,722	Fisher Controls LLC (CT)	N. Stonington, CT	12/05/2003	12/02/2003
53,723	Johnston Industries (Wkrs)	Valley, AL	12/05/2003	12/02/2003
53,724	TSI (Wkrs)	Manassas, VA	12/05/2003	11/30/2003
53,725	CCI Power Supplies, LLC (Wkrs)	Pardeeville, WI	12/05/2003	12/03/2003
53,726	Butler Manufacturing Co. (USWA)	Galesburg, IL	12/05/2003	11/21/2003
53,727	CSP Technologies, Inc. (Wkrs)	High Point, NC	12/05/2003	12/01/2003
53,728	Wohlert Corporation (Wkrs)	Gladwin, MI	12/05/2003	11/24/2003

[FR Doc. 03–32274 Filed 12–31–03; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,345]

State of Alaska Commercial Fisheries Entry Commission Permit Number S03T56513U, Manokotak, AK; Notice of Revised Determination on Reconsideration

By letter of April 25, 2003, the company official requested administrative reconsideration of the Department's Negative Determination Regarding Eligibility for Workers under State of Alaska Commercial Fisheries Entry Commission Permit Number S03T56513U, Manokotak, Alaska, to Apply for Worker Adjustment Assistance. The notice was published in the **Federal Register** on April 24, 2003 (68 FR 20177).

The initial petition was denied because there had been no employment decline. The company official however has provided information showing that all workers producing salmon were permanently separated from employment with the subject firm.

The subject firm supplied salmon to a processor whose workers were certified eligible to apply for trade adjustment assistance. The loss of business with the salmon processor contributed importantly to worker separations under State of Alaska Commercial Fisheries Entry Commission Permit Number S03T56513U, Manokotak, Alaska.

Conclusion

After careful review of the facts obtained in the reconsideration, I determine that workers covered by State of Alaska Commercial Fisheries Entry Commission, Permit Number S03T56513U, Manokotak, Alaska, qualify as adversely affected secondary workers under section 222 of the Trade Act of 1974.

In accordance with the provisions of the Act, I make the following revised determination:

''All workers of State of Alaska Commercial Fisheries Entry Commission, Permit Number S03T56513U, Manokotak, Alaska, who became totally or partially separated from employment on or after March 24, 2002, through two years from the date of certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC, this 1st day of December, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32282 Filed 12–31–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,308]

State of Alaska Commercial Fisheries Entry Commission Permit Number SO4T60318C–01, Manokotak, AK; Notice of Revised Determination on Reconsideration

By letter of April 25, 2003, the company official requested administrative reconsideration of the Department's Negative Determination Regarding Eligibility for Workers under State of Alaska Commercial Fisheries Entry Commission Permit Number SO4T60318C, Manokotak, Alaska, to Apply for Worker Adjustment Assistance. The notice was published in the **Federal Register** on April 11, 2003 (68 FR 17830).

The initial petition was denied because there had been no employment decline. The company official however has provided information showing that all workers producing salmon were permanently separated from employment with the subject firm.

The subject firm supplied salmon to a processor whose workers were certified eligible to apply for trade adjustment assistance. The loss of business with the salmon processor contributed importantly to worker separations under State of Alaska Commercial Fisheries Entry Commission Permit Number SO4T60318C–01, Manokotak, Alaska.

New information provided by the official of the firm shows that the permit was transferred to another salmon producer. According to the Alaska Commercial Fisheries Entry Commission, the permit number for the subject firm has a suffix of 01 (SO4T60318C–01). Since the workers under the State of Alaska Commercial Fisheries Entry Commission Permit Number SO4T60318C–01, Manokotak, Alaska, are permanently separated from employment and the permit was transferred to another salmon producer, the Department has determined that this certification shall not extend to the successor firm which is assigned permit number SO4T60318C–02.

Conclusion

After careful review of the facts obtained in the reconsideration, I determine that workers covered by State of Alaska Commercial Fisheries Entry Commission, Permit Number SO4T60318C–01, Manokotak, Alaska, qualify as adversely affected secondary workers under section 222 of the Trade Act of 1974.

In accordance with the provisions of the Act, I make the following revised determination:

''All workers of State of Alaska Commercial Fisheries Entry Commission, Permit Number SO4T60318C–01, Manokotak, Alaska, who became totally or partially separated from employment on or after March 21, 2002, through two years from the date of certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC, this 1st day of December, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32283 Filed 12–31–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,609]

Coastal Lumber Company, A/K/A Hazelton Wood Components Division, Bruceton Mills, WV; Notice of Revised Determination on Reconsideration Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

By letter dated October 15, 2003, Construction Works of West Virginia, Inc., a Division of West Virginia State and Building Construction Trades Council and West Virginia AFL–CIO, requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The certification was signed on September 23, 2003. The notice was published in the **Federal Register** on November 28, 2003 (68 FR 66879).

The initial certification was amended on October 24, 2003 to correctly identify the subject firm title name to read Coastal Lumber Company, a/k/a Hazelton Wood Components Division, Bruceton Mills, West Virginia. The notice will soon be published in the **Federal Register**.

The initial investigation determined that less than five percent of the affected worker group was age fifty or older.

The petitioner provided new information to show that at least five percent of the workforce at the subject from is at least fifty years of age. Additional investigation has determined that the workers possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

''All workers at Coastal Lumber Company, a/k/a Hazelton Wood Components Division, Bruceton Mills, West Virginia, who became totally or partially separated from employment on or after August 13, 2002 through September 23, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC this 12th day of December 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32286 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,337]

De Machine Shop, Berthoud, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 24, 2003, in response to a petition filed by a worker on behalf of workers at De Machine Shop, Berthoud, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of November, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32277 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,408]

Elastic Corporation of America, Inc., a Division of Worldtex, Inc., Woolwine, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 3, 2003, in response to a worker petition filed by a company official on behalf of workers at Elastics Corporation of America, Inc., a division of Worldtex, Inc., Woolwine, Virginia.

The petitioner has requested that this petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of November, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32276 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,066]

Komag, Inc., Materials Technology Division (KMT), Including Leased Workers of Manpower, Santa Rosa, CA; Notice of Revised Determination on Reconsideration

By application of May 28, 2003, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 21, 2003, based on the finding that imports of hard drive disks did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on July 18, 2002 (67 FR 47399).

In the reconsideration review, it was revealed that the Department erred in its determination description of subject firm production as ''hard drive disks'', when in fact the petitioning group produced substrates used in hard drive disks.

To support the request for reconsideration, the petitioner provided additional information to supplement that which was gathered during the initial investigation. Upon further review and contact with the company, it was revealed that the subject firm produced a type of substrate prototype that constituted a significant portion of subject firm production, and that this production was shifted to Malaysia. The investigation further revealed that this production is currently being imported to the United States.

Conclusion

After careful consideration of the facts obtained on reconsideration, I determine that there was a shift in production from the workers' firm or subdivision to Malaysia of articles that are like or directly competitive with those produced by the subject firm or subdivision, and there has been or is likely to be an increase in imports of like or directly competitive articles.

In accordance with the provisions of the Act, I make the following certification:

''Workers of Komag Inc., Materials Technology Division, Santa Rosa, California, engaged in employment related to the production of substrate prototypes, and leased workers of Manpower producing substrate prototypes at Komag Inc., Materials Technology Division, Santa Rosa, California, who became totally or partially separated from employment on or after January 14, 2002, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC this 24th day of November 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32284 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,847]

Medsource Technologies, Newton, MA; Notice of Negative Determination on Reconsideration

On December 2, 2002, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The

notice will soon be published in the **Federal Register**.

The Department initially denied TAA to workers of MedSource Technologies, Newton, Massachusetts because there was neither an absolute decline in subject firm sales or production nor a shift of production to a qualified country. The investigation revealed neither sales or production declines nor shifts of production during the relevant time period.

In the request for reconsideration, the petitioner alleges that production shifted from the subject facility to Mexico. The petitioner provided documents to support this allegation. A careful review of the documents revealed that MedSource did plan corporation-wide shifts of production from several domestic facilities to the Mexico facility in October 2003. However, according to a company official, the shift of production from the subject facility to Mexico did not begin until December 2003, after the relevant time period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of MedSource Technologies, Newton, Massachusetts.

Signed at Washington, DC, this 9th day of December 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32285 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,963]

Nortel Networks, Department R084, Research Triangle Park, NC; Notice of Revised Determination on Reconsideration

By application of August 14, 2003, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on July 2, 2003, based on the finding that the petitioning workers of this firm do not produce an article within the meaning of section 222 of the Trade Act of 1974. The denial notice was published in the **Federal Register** on July 22, 2003 (68 FR 43372).

In a review of the initial investigation, it was revealed that the work performed by the worker group did perform testing and product modification, and that subject firm workers produced an article as part of the finishing work performed on fiber optic backbone telecommunication networks. Further, the initial investigation also revealed that employment declined and that the testing and product modification was shifted to Canada.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that there was a shift in production from the workers firm or subdivision to Canada of articles that are like or directly competitive with those produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

''All workers of Nortel Networks, Department R084, Research Triangle Park, North Carolina, who became totally or partially separated from employment on or after May 19, 2002, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC, this 2nd day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32281 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,496]

Pass & Seymour/Legard, San Antonio, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 10, 2003 in response to a petition filed by a company official on behalf of workers at Pass & Seymour/Legard, San Antonio, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 26th day of November, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32275 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,559 and TA–W–52,559A]

Pillowtex Corporation, Bed and Bath Division, Including Leased Workers of Corestaff Agency, Rakes Staffing, A & R Agency and Ajilon Staffing, Kannapolis, NC; Pillowtex Corporation, New York Design and Sales Office, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 5, 2003, applicable to workers of Pillowtex Corporation, Bed and Bath Division, including leased workers of Corestaff Agency, Rakes Staffing, A & R Agency, and Ajilon Staffing, Kannapolis, North Carolina. The notice was published in the **Federal Register** on October 10, 2003 (68 FR 58720).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of sheets.

The company reports that worker separations occurred at New York Design and Sales Office, New York, New York location of the subject firm. The New York Design and Sales Office workers provide sales, and designing function services for the subject firm's production plant located in Kannapolis, North Carolina.

Based on these findings, the Department is amending the certification to include workers of Pillowtex Corporation, New York Design and Sales Office, New York, New York.

The intent of the Department's certification is to include all workers of Pillowtex Corporation who were adversely affected by increased imports.

The amended notice applicable to TA-W–52,559 is hereby issued as follows:

All workers of Pillowtex Corporation, Bed and Bath Division, Kannapolis, North Carolina and leased workers of Corestaff Agency, Rakes Staffing, A & R Agency and

Ajilon Staffing, Kannapolis, North Carolina producing sheets at Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corporation, Bed and Bath Division, Kannapolis, North Carolina (TA–W–52,559) and Pillowtex Corporation, New York Design and Sales Office, New York, New York (TA–W–52,559A) who became totally or partially separated from employment on or after August 15, 2003, through September 5, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 23rd day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32288 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,755]

Pillowtex Corporation, New York Design and Sales Office, New York, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 10, 2003, in response to a worker petition which was filed on behalf of workers at Pillowtex Corporation, New York Design and Sales Office, New York, New York.

An active certification covering the petitioning group of workers is already in effect (TA–W–52,559A, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 23rd day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32289 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,651]

R.R. Donnelley & Sons Co., Lancaster Financial Printing Division, Lancaster, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked on October 15, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of R.R. Donnelley & Sons Company, Lancaster Financial Printing Division, Lancaster, Pennsylvania, was signed on September 4, 2003, and published in the **Federal Register** on October 10, 2003 (68 FR 58719).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at R.R. Donnelley & Sons Company, Lancaster Financial Printing Division, Lancaster, Pennsylvania. Subject firm workers perform composition, programming, and proof reading of HTML web pages for financial reports. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as a service and refers to ''the production of Edgar and HTML pages as a final product''.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official clarified that workers of Lancaster Financial Printing Division are engaged in composition and data entry, and that some portion of data entry and composition process was indeed outsourced to India. In its turn this data is sent back to R.R. Donnelly & Sons Company in the United States via electronic documents, which are either electronically delivered to customers or printed domestically for further distribution. The official concluded that layoffs at the subject firm are mainly attributable to a decline in volume of work over the past years.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but rather only whether they produced an article within the meaning of section 222(3) of the Trade Act of 1974.

The petitioner appears to allege that, because petitioning workers create electronic documents in different formats, their work should be considered production.

Data entry and composition are not considered production of an article within the meaning of section 222(3) of the Trade Act. Petitioning workers do not produce an ''article'' within the meaning of the Trade Act of 1974. Formatted electronic documents and databases are not tangible commodities, that is, marketable products, and they are not listed on the Harmonized Tariff Schedule of the United States (HTS), published by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes all articles imported to or exported from the United States. Furthermore, when a Nomenclature Analyst of the USITC was contacted in regards to whether virtual networks and databases provided by subject firm workers fit into any existing HTS basket categories, the Department was informed that no such categories exist.

In addition, the Trade Adjustment Assistance (TAA) program was established to help workers who produce articles and who lose their jobs as a result of trade agreements. Throughout the Trade Act an article is often referenced as something that can be subject to a duty. To be subject to a duty on a tariff schedule an article will have a value that makes it marketable, fungible and interchangeable for commercial purposes. But, although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, informational products that could historically be sent in letter form and that can currently be electronically transmitted, are not listed in the HTS. Such products are not the type of employment work products that customs officials inspect and that the TAA program was generally designed to address.

The petitioner also alleges that imports impacted layoffs, asserting that because workers lost their jobs due to a transfer of job functions to India, petitioning workers should be considered import impacted.

The petitioning worker group is not considered to have engaged in production, thus any foreign transfer of their job duties is irrelevant within the context of eligibility for trade adjustment assistance.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or

misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 2nd day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32279 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,451]

Saurer Inc., a/k/a Schlafhorst Inc., Charlotte, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application of September 30, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Saurer Inc., a/k/a Schlafhorst Inc., Charlotte, North Carolina was signed on September 5, 2003, and published in the **Federal Register** on October 10, 2003 (68 FR 58719).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Saurer Inc., a/k/a Schlafhorst Inc., Charlotte, North Carolina engaged in buying and selling of textile machinery and parts. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner alleged that, in fact, the petitioning worker group was engaged in production of a variety of articles in connection with servicing textile machinery, including training manuals, flash cards containing software upgrades, and a variety of spare parts used to service existing customer machinery. The petitioner further directed the Department to contact a specific company official who would be particularly knowledgeable about production activity at the facility.

The Department contacted the company official specified in regard to these allegations. As a result, it was revealed that the petitioning worker group worked in the Service Department, and were separately identifiable from two other departments at the subject facility, engaged in buying and selling of textile machinery and performing repair work, respectively. Ensuing conversations with this official revealed that all of the items specified by the petitioner were produced at the subject facility, collectively constituting a small but significant portion of work performed by the petitioning worker group. These products include manuals, flashcards encoded with customized software and spare parts. However, none of the products are being imported, rather they continue to be produced at the subject firm, albeit in dramatically diminished volumes due to a downturn in the market for textile machinery.

The official further concluded that the manuals and customized software were designed specifically for machinery purchased by the customer from the subject firm, so there was little likelihood of outside competition in regard to these products. Regarding spare parts made on demand, this production accounted for a negligible amount of work performed by the petitioning worker group when considered in isolation in the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of November, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32280 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,576]

Smith Meter, Inc., (Also Known as FMC Measurement Solutions), a Subsidiary of FMC Technologies, Inc., Erie, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of October 1, 2003, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on September 10, 2003 and published in the **Federal Register** on October 10, 2003 (68 FR 58719).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Smith Meter, Inc. (a.k.a. FMC Measurement Solutions), a subsidiary of FMC Technologies, Inc., Erie, Pennsylvania, engaged in the production of liquid measurement equipment, was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of liquid measurement equipment. The survey revealed that none of the customers increased their import purchases of liquid measurement equipment, while reducing their purchases from the subject firm during the relevant period. The subject firm imported negligible percentage of liquid measurement equipment during the relevant period.

The petitioner attached two documents in support of his allegations, that Smith Meter, Inc. (a.k.a. FMC Measurement Solutions) does import

liquid measurement equipment. First document is a letter to General Manager of FMC Measurement Solutions announcing the winner of 2002 Eagle Award. The announcement remarks Liquid Products, Measurement Solutions' ''sound sourcing strategies'', and refers to the sourcing of bearings and machined rotors in China.

Further contact with the company official revealed that the subject firm has been establishing contacts with foreign firms and is currently looking into buying some products in China. The subject firm does import a small fraction of products, which in no way affects domestic production of liquid measurement equipment. Imports of bearings and machined rotors were reflected in the data provided by the subject firm in the Confidential Data Request during the initial investigation. The Department of Labor received and analyzed financial information provided by the subject firm. A review of the initial investigation revealed that, in context to total plant production, the amount of imports by the subject firm is considered to be negligible during the period under investigation.

The second document provided by the petitioner is the announcement of the recipient of FMC Eagle Award for 2003. The letter does not contain any information, which will support petitioner's allegation and is irrelevant in this investigation.

As already indicated, a negligible amount of product has been imported by the subject facility, albeit not significant enough to contribute to layoffs.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32287 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,774]

Weyerhauser Co., North Bend, OR; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 18, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The notice was signed on October 20, 2003, and published in the **Federal Register** on November 6, 2003 (68 FR 62832).

The Department has reviewed the request for reconsideration and has determined that the petitioner has provided additional customer information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 19th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–32278 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and area effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and

fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

District of Columbia
DC030001 (Jun. 13, 2003)
DC030003 (Jun. 13, 2003)

Volume III

None

Volume IV

Minnesota
MN030001 (Jun. 13, 2003)
MN030003 (Jun. 13, 2003)
MN030004 (Jun. 13, 2003)
MN030007 (Jun. 13, 2003)
MN030008 (Jun. 13, 2003)
MN030010 (Jun. 13, 2003)
MN030012 (Jun. 13, 2003)
MN030013 (Jun. 13, 2003)
MN030014 (Jun. 13, 2003)
MN030015 (Jun. 13, 2003)
MN030017 (Jun. 13, 2003)
MN030019 (Jun. 13, 2003)
MN030027 (Jun. 13, 2003)
MN030031 (Jun. 13, 2003)
MN030039 (Jun. 13, 2003)
MN030043 (Jun. 13, 2003)
MN030045 (Jun. 13, 2003)
MN030047 (Jun. 13, 2003)
MN030048 (Jun. 13, 2003)
MN030049 (Jun. 13, 2003)
MN030051 (Jun. 13, 2003)
MN030053 (Jun. 13, 2003)
MN030054 (Jun. 13, 2003)
MN030055 (Jun. 13, 2003)
MN030056 (Jun. 13, 2003)
MN030057 (Jun. 13, 2003)
MN030058 (Jun. 13, 2003)
MN030059 (Jun. 13, 2003)
MN030060 (Jun. 13, 2003)
MN030061 (Jun. 13, 2003)
MN030062 (Jun. 13, 2003)

Volume V

None

Volume VI

None

Volume VII

Hawaii
HI030001 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service *(http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 24th day of December 2003.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–32190 Filed 12–31–03; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 17, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001,
E-mail: records.mgt@nara.gov,
FAX: (301) 837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle

Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Food Safety and Inspection Service (N1–462–03–02, 7 items, 7 temporary items). Records relating to applications submitted by meat and poultry manufacturers for approval of labels and food additives. Included are such records as applications, sketches of labels, and electronic copies of documents created using electronic mail and word processing.

2. Department of Defense, Defense Information Systems Agency (N1–371–03–1, 4 items, 4 temporary items). Records relating to the Defense Department's Public Key Infrastructure (PKI) Certification Program consisting of completed forms documenting subscriptions to the Department of Defense Public Key Infrastructure. Included are original paper forms, scanned copies, and electronic copies of documents created using electronic mail and word processing.

3. Department of Health and Human Services, Centers for Disease Control and Prevention (N1–442–01–1, 25 items, 25 temporary items). Records of radiation safety, environmental protection, and occupational health programs. Records relate to such matters as licensing, sampling, testing and monitoring activities, training, and assessments and audits. Also included are electronic copies of records created using electronic mail and word processing.

4. Department of Homeland Security, Transportation Security Administration (N1–560–03–10, 21 items, 15 temporary items). Reports, statistics, reading files, planning records, training facility records, trainee files, reference files, and electronic copies of records created using electronic mail and word processing. Records are accumulated primarily by the agency's Office of Training and Quality Performance. Proposed for permanent retention are recordkeeping copies of such records as master files relating to specific training programs, training policy memorandums, photographs, sound recordings, and video recordings.

5. Department of Homeland Security, Transportation Security Administration (N1–560–03–12, 5 items, 5 temporary items). Correspondence files, reports, and reference files accumulated by the Office of Information Technology. Also included are electronic copies of records created using electronic mail and word processing.

6. Department of Homeland Security, Transportation Security Administration (N1–560–03–13, 26 items, 25 temporary items). Records relating to financial management. Included are such records as general correspondence, reports, tax exempt documents, trip reports, quarterly and monthly financial statements, copies of vouchers, transaction statements, and accounts receivable documents. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of the agency's annual financial report.

7. Department of Homeland Security, Transportation Security Administration (N1–560–03–14, 17 items, 16 temporary items). Records relating to budget development and execution. Included are such records as correspondence, annual reports, planning documents, budgeting work plans, preliminary estimates and justifications, and fund requests. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of the agency's annual budget submission.

8. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–4, 3 items, 2 temporary items). Briefing books and correspondence files relating to budget development and submission. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of the agency's consolidated budget submission.

9. Department of the Treasury, Bureau of the Public Debt (N1–53–04–1, 6 items, 6 temporary items). Records relating to savings bonds and marketable securities, including requests for payment, exchange applications, non-receipt claims, reinvestment applications, and reissue requests for accrual savings bonds.

10. Environmental Protection Agency, Office of Enforcement and Compliance Assurance (N1–412–03–2, 3 items, 3 temporary items). Software, electronic data, and system documentation relating to a system used to track compliance activities carried out under the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act.

11. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances (N1–412–03–14, 3 items, 1 temporary item). Software relating to an electronic system used as an index to unpublished studies on chemical testing and the adverse effects of chemicals on health and the environment. Electronic data and the related system documentation are proposed for permanent retention.

12. Environmental Protection Agency, Office of Research and Development (N1–412–03–18, 1 item, 1 temporary item). Electronic and paper logbooks accumulated in connection with routine activities, such as the maintenance of scientific instruments used in agency laboratories. Notebooks relating to research projects are excluded.

13. Federal Election Commission, Office of Administrative Review (N1–339–03–1, 4 items, 4 temporary items). Records relating to administrative fines imposed by the agency, including electronic copies of records created using electronic mail and word processing.

14. Tennessee Valley Authority, Fossil Power Group (N1–142–04–2, 4 items, 4 temporary items). Calibration records used to ensure quality assurance in the repair, modification, and testing of equipment. Included are electronic copies of records created using electronic mail and word processing.

Dated: December 22, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–32254 Filed 12–31–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–335]

Florida Power and Light Company, St. Lucie Plant, Unit No. 1; Exemption

1.0 Background

The Florida Power and Light Company (FPL, the licensee) is the holder of Facility Operating License No. DPR–67, which authorizes operation of the St. Lucie Plant, Unit No. 1. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located in St. Lucie County, Florida.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, appendix R, Section III.G.2.d specifies separation of cables and equipment and associated nonsafety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards as one means of providing adequate fire protection for redundant trains of safe-shutdown equipment located inside noninerted containments.

On February 21, 1985, the NRC approved an exemption from Appendix R to allow redundant trains in the St. Lucie Unit 1 containment to have less than 20 feet horizontal separation. On March 5, 1987, the NRC approved a revision to this exemption to allow minimal intermittent combustibles between the redundant trains. The staff approved the exemptions based, in part, on the redundant trains being separated by more than 7 feet horizontally and 25 feet vertically. The licensee subsequently determined that the assumption of 25 feet vertical separation was incorrect. The proposed action resubmits the exemption request and provides a detailed fire model to demonstrate that, with the existing vertical separation and a minimum of 7 feet horizontal separation, a fire in one train will not damage the redundant train. The revised request limits the exemption to the cable trays in the containment annular region between radial column lines 2 and 6 with the following assumptions:

(1) Redundant trays are at least 7 feet apart with no intervening combustibles

(2) Electrical cabinets near the redundant trains are enclosed with no ventilation openings

(3) Cables crossing redundant trays are in conduit and protected

(4) The bottom tray in each stack of cable trays is fully enclosed by a noncombustible cover

(5) Vertical cable trays have noncombustible covers

(6) Existing cables are covered with fire retardant coating

(7) New cables added will be IEEE 383 qualified and limited in number by the fire analysis.

In summary, the exemption would be revised to allow separation of cables of redundant trains by a horizontal distance of at least 7 feet with no intervening combustibles inside containment in the annular region between radial column lines 2 and 6.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) special circumstances are present. These include the special circumstance that application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule is to limit fire damage so that one train of systems necessary to achieve and maintain hot shutdown conditions remains free of fire damage.

The staff examined the licensee's rationale to support the revised exemption request and concluded that granting the exemption to allow less than 20 feet horizontal separation between redundant cable trays would meet the underlying purpose of 10 CFR part 50. The licensee provided a detailed fire model that postulates a self-initiated cable fire, spreading horizontally and vertically in one stack of cable trays until the original combustible material (*i.e.*, cable jacket insulation) is completely consumed. Based on the maximum postulated fire, a maximum radiant heat flux and the heat flux imposed on the redundant cable trays can be calculated to see if ignition of the redundant cables is possible. The model demonstrates that the resulting heat flux from the largest postulated exposure fire is less than half the heat flux needed to ignite the redundant cable trays. There was a degree of conservatism throughout the correlations and, therefore, a larger safety factor probably exists.

Based upon a consideration of the licensee's fire model, which indicates that, with a minimum of 7 feet horizontal separation, a cable fire in one train is highly unlikely to damage cables in the redundant train, the staff concludes that application of the regulation is not necessary to achieve the underlying purpose of the rule.

Therefore, the staff concludes that pursuant to 10 CFR 50.12(a)(2)(ii) special circumstances are present and that an exemption may be granted to allow less than 20 feet horizontal separation between redundant trains.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants FPL an exemption from the requirements of 10 CFR part 50, appendix G, Section II.G.2.d for St. Lucie Unit No. 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 69728).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of December 2003.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–32252 Filed 12–31–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030–05980, 030–03982 and EA–03–219]

In the Matter of Safety Light Corporation, Bloomsburg, PA; Demand for Information

Safety Light Corporation (the Licensee) is the holder of Byproduct Material Licenses issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 for the facility at 4150–A Old Berwick Road in Bloomsburg, Pennsylvania. License No. 37–00030–08 authorizes, in part, the licensee to manufacture self-luminous devices, foils, targets, and pins containing tritium, and to distribute those items to persons specifically licensed by the NRC or an NRC Agreement State. License No. 37–00030–02 authorizes the licensee to characterize and decommission its contaminated facilities, equipment, and land. The Licenses were last renewed on December 28, 1999, and are due to expire on December 31, 2004.

In the December 1999 renewal of License Nos. 37–00030–02 and 37–00030–08, conditions were included in each License that exempted the Licensee from certain of the Commission's financial assurance requirements set forth in 10 CFR 30.32 and 10 CFR 30.35. This exemption was granted in response to the licensee's request to the Commission based on the lack of sufficient funds at the time to assure that adequate financial ability existed to decommission the facility. The NRC specifically approved the exemptions (originally in Condition 16 of Amendment No. 51 for License 37–00030–02 and Condition 20 of Amendment No. 13 for License 37–00030–08), provided that the Licensee make specified monthly payments into an NRC trust fund to support decommissioning activities, including $8,000 for each month in 2001 and 2002, and $9,000 for each month in 2003. The NRC granted renewal of each License based on the Licensee's ability to continue to remediate and adequately secure radioactive materials at the facility using the money deposited into the NRC trust fund.

During telephone conversations between Ms. Marie Miller, NRC Region I, and Mr. Larry Harmon, Plant Manager for the Licensee, on November 21, 2003, the NRC learned that the Licensee had neither made some of the required payments into its NRC trust fund, nor notified the NRC that payments were not being made. This failure to make the required payments was confirmed in a subsequent telephone conversation between Mr. William Lynch, Vice President for the Licensee, and Dr. Ronald Bellamy, NRC Region I, on the same day. The bank records for the NRC trust fund period from April 2001 through October 2003, list twenty-four deposits to the fund, rather than the required thirty-one deposits. For the twenty-one month period from April 2001 through December 2002, two of the required $8,000 monthly deposits had not been made. For the ten month period from January 2003 through October 2003, eight of the required $9,000 monthly deposits had not been made (no funds were deposited during six of the months, and only $8,000 was deposited during January and February 2003). In addition, the NRC has since learned that the required $9,000 deposit was not made in November 2003. The failure to make these deposits resulted in a total deficit of $81,000 (plus interest) to the NRC trust fund. However, the NRC was subsequently informed, during a telephone conversation between Ms. Marie Miller and Mr. Larry Harmon on December 9, 2003, that the Licensee had deposited $13,500 to the NRC trust fund on December 9, 2003. Based on the last deposit, it appears that the NRC trust fund is $67,500 in arrears, not including the interest that would have accrued had the required monthly payments been made.

By not making the required monthly deposits to the NRC trust fund, the Licensee has violated Condition 16 of License No. 37–00030–02 and Condition 20 of License No. 37–00030–08 as well as 10 CFR 30.32 and 10 CFR 30.35. This violation is significant because these deposits are necessary to fund ongoing decommissioning activities, including the disposition of radioactive waste presently stored at the facility. The NRC is concerned that without payment of these funds into the NRC trust fund, no funds will be available for decontamination of the facility and proper disposal of radioactive waste stored at the site.

Therefore, further information is needed, to determine whether the Commission can have reasonable assurance that the Licensee will adhere to all License requirements and otherwise conduct its activities in accordance with the Commission's requirements.

Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR part 30, in order for the Commission to determine whether your licenses should be modified, suspended or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, the Licensee is required to submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the date of this Demand For Information, in writing and under oath or affirmation:

A. The detailed schedule for making all overdue payments, with interest, to the trust fund;

B. The reasons why the Licensee did not make the required payments, as scheduled, to the NRC trust fund;

C. The reasons why the NRC should have confidence that the Licensee will, in the future, make the monthly deposits to the NRC trust fund as required by License Condition 16 of Amendment No. 53 for License 37–00030–02 and License Condition 20 of Amendment No. 13 for License 37–00030–08;

D. Assurance from the Licensee, should it encounter any difficulty making required monthly deposits in the future, that it will promptly notify the NRC that there will be a delay in making a specific deposit, and provide the reasons for the delay;

E. The reasons why the NRC should have confidence that in the future, the Licensee will adhere to license conditions and applicable NRC requirements;

F. The reasons why, in light of the Licensee's past failure to make all required payments to the trust fund, License Nos. 37–00030–02 and 37–00030–08 should not be modified, suspended, or revoked.

Copies also shall be sent to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

For the Nuclear Regulatory Commission.

Dated this 19th day of December 2003.

Frank J. Congel,

Director, Office of Enforcement.

[FR Doc. 03–32253 Filed 12–31–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (Volume 68, Number 237, Page 68958 and 68959) on December 10, 2003. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's January 6, 2004 Board of Directors meeting scheduled for 2 p.m. on December 30, 2003 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: December 30, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–32315 Filed 12–30–03; 9:52 am]

BILLING CODE 3210–01–M

OFFICE OF PERSONNEL MANAGEMENT

Comment Request for OMB Review of a New Information Collection: General Population Rental Equivalency Survey

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for a review of a new information collection. OPM is seeking comments on its plan to conduct a General Population Rental Equivalency Survey (GPRES) on a one-time basis to collect information on actual and estimated rents and rental characteristics from homeowners and renters in Alaska, Hawaii, Guam, Puerto Rico, the U.S. Virgin Islands, and the Washington, DC, area. OPM will use this information to see whether (1) differences between homeowner rent estimates and rental rates for comparable housing vary among the nonforeign cost-of-living allowance (COLA) areas and the Washington, DC, area; (2) rents vary among areas based on how long renters live in their rental units; and (3) rental data collected in GPRES differ on average from rental data that OPM collects in the COLA surveys. OPM regulations, adopted pursuant to the stipulation of settlement in *Caraballo* v. *United States*, No. 1997–0027 (D.V.I.), August 17, 2000, require the survey of rents and rental equivalence (homeowner estimates of the rental value of their homes).

OPM will collect information from approximately 5,000 to 8,000 respondents and estimates the total time per respondent at 8 minutes, for a total burden of 670 to 1070 hours. To determine the number of respondents, OPM used a common statistical sampling formula and the standard deviations from a previous Federal employee housing survey and from COLA rental surveys at different confidence levels. At the recommendation of Westat, a contractor advising OPM, OPM anticipates using computer assisted telephone interviews (CATI) for this survey. Westat estimates, based on its experience and the experience of other surveyors, that each CATI will take on average approximately 8 minutes.

Comments are particularly invited on whether (1) this collection of information is necessary for the proper performance of OPM functions, (2) it will have practical utility, (3) our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology, and (4) there are ways in which we can minimize respondent burden of the collection of information through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251, or e-mail *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Submit comments on or before March 2, 2004.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; fax (202) 606–4264, or e-mail: *cola@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606–2838.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–32257 Filed 12–31–03; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 38–128

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. RI 38–128, It's Time to Sign Up for Direct Deposit, is now primarily used by OPM to give recent retirees the opportunity to waive Direct Deposit of their annuity payments. The form is sent only if the separating agency did not give the retiring employee this election opportunity. This form may also be used to enroll in Direct Deposit, which was its primary use before Public Law 104–134 was passed. This law requires OPM to make all annuity payments by Direct Deposit unless the payee has waived the service in writing.

Approximately 20,000 forms are completed annually. The form takes approximately 30 minutes to complete. The annual estimated burden is 10,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received by February 1, 2004.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Group, Retirement Services, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415–3540; and

Joseph F. Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader,

Publications Team, RIS Support Services, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–32258 Filed 12–31–03; 8:45 am]

BILLING CODE 6325–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–400 (Sub–No. 3X)]

Seminole Gulf Railway, L.P.—Abandonment Exemption—in Sarasota County, FL

On December 15, 2003, Seminole Gulf Railway, L.P. (SGLR), filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an approximately 12.43-mile portion of its Venice Branch between milepost SW 892 outside the city limits of the City of Sarasota, and milepost 904.4 near the City of Venice, in Sarasota County, FL. The line includes a ''wye'' and stub at approximately milepost SW 904.2 and side tracks. The line traverses United States Postal Service Zip Codes 34233, 34238, 34272, 34275, and 34285, and includes the stations of Laurel (milepost SW 900), Nakomis (milepost SW 902), and Venice (milepost SW 904).

The line does not contain federally granted rights-of-way. Any documentation in SGLR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 2, 2004.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 22, 2004. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–400 (Sub-No. 3X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103. Replies to the petition are due on or before January 22, 2004.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 22, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–32270 Filed 12–31–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 15, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 2, 2004 to be assured of consideration.

Departmental Offices/Community Development Financial Institutions (CDFI) Fund

OMB Number: New.

Form Number: CDFI 0010.

Type of Review: New collection.

Title: New Markets Tax Credit (NMTC) Program Allocation Tracking System (ATS).

Description: The purpose of the NMTC Program ATS is to obtain information on investors making qualified investments in community development entities that receive New Markets Tax Credit allocation.

Respondents: Business or other for-profit, Not-for-profit institution.

Estimated Number of Respondents/Recordkeepers: 66.

Estimated Burden Hours per Respondent/Recordkeeper: 12 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 792 hours.

OMB Number: New.

Form Number: CDFI 0011.

Type of Review: New collection.

Title: NMTC Program Allocation Agreement—Disclosure, Audited Financial Statements.

Description: Entities receiving New Markets Tax Credit Program Allocation must enter into an allocation agreement with the CDFI Fund. The allocation agreement contains certain disclosure and reporting requirements.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 71.

Estimated Burden Hours per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 76 hours.

OMB Number: 1559–0011.

Form Number: CDFI 0016.

Type of Review: Extension.

Title: Conflict of Interest Package for CDFI Fund Non-Federal Readers.

Description: The CDFI Fund seeks to collect information from potential contractors hired to evaluate Fund program applications to identify, evaluate, and avoid potential conflicts of interest which the contractors may have with such applications.

Respondents: Individuals or households.

Estimated Number of Respondents: 150.

Estimated Burden Hours per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 112 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–32260 Filed 12–31–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 15, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before Februay 2, 2004 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Electronic Savings Bonds Customer Awareness Survey.

Description: Survey to measure savings bond purchasers' awareness of electronic savings bond accounts (TreasuryDirect) and help plan investor education efforts for electronic securities in support of eventual elimination of paper savings bonds.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,500.

Estimated Burden Hours per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 500 hours.

Clearance Officer: Vicki S. Thorpe, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–32261 Filed 12–31–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 19, 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, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 2, 2004 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0032.

Form Number: TTB F 3067 (5210.9).

Type of Review: Extension.

Title: Manufacturer of Tobacco Products.

Description: This form is necessary to determine the beginning and ending inventories of tobacco products at the premises of a tobacco products manufacturer. The inventory is recorded on this form by the proprietor and is used to determine tax liability, compliance with regulations and for protection.

Respondents: Business of other for-profit, farms.

Estimated Number of Respondents: 34.

Estimated Burden Hours per Respondent: 5 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 170 hours.

OMB Number: 1513–0059.

Recordkeeping Requirement ID Number: TTB REC 5150/3.

Type of Review: Extension.

Title: Usual and Customary Business Records Relating to Tax-Free Alcohol.

Description: Tax-free alcohol is used for nonbeverage purposes by educational organizations, hospitals, laboratories, etc. Records maintain spirits accountability and protect tax revenue and public safety.

Respondents: Not-for-profit institutions, Federal Government, State, local or tribal government.

Estimated Number of Recordkeepers: 4,560.

Estimated Burden Hours per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1513–0061.

Recordkeeping Requirement ID Number: TTB REC 5150/2.

Type of Review: Extension.

Title: Letterhead Applications and Notices Relating to Denatured Spirits.

Description: Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal/household products. Permits/Applications control the authorized use and flow. Tax revenue and public safety is protected.

Respondents: Business or other for-profit, not-for-profit institutions, State, local or tribal government.

Estimated Number of Recordkeepers: 3,111.

Estimated Burden Hours per Recordkeeper: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1,556 hours.

OMB Number: 1513–0068.

Recordkeeping Requirement ID Number: TTB REC 5210/1.

Type of Review: Extension.

Title: Tobacco Products Manufactures—Records Operations.

Description: Tobacco products manufacturers must maintain a system of records that provide accountability over the tobacco products received and produced. Needed to ensure tobacco transaction to be traced, and ensure that tax liabilities have been totally satisfied.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 108.

Estimated Burden Hours per Recordkeeper: 150 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 16,200 hours.

OMB Number: 1513–0071.

Recordkeeping Requirement ID Number: TTB REC 5230/1.

Type of Review: Extension.

Title: Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices.

Description: Because the tax on large cigars is based on the sales price, this record is needed to verify that the correct tax has been determined by the manufacturer or importer.

Respondents: Business of other for-profit.

Estimated Number of Recordkeepers: 108.

Estimated Burden Hours per Recordkeeper: 2 hours, 20 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 252 hours.

Clearance Officer: William H. Foster, (202) 927–8210, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–32262 Filed 12–31–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 19, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 2, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1507.

Regulation Project Number: INTL–656–87 Final.

Type of Review: Extension.

Title: Treatment of Shareholders of Certain Passive Foreign Investment Companies (PFICs).

Description: The reporting requirements affect U.S. persons that are direct and indirect shareholders of passive foreign investment companies (PFICs). The IRS uses Form 8621 to identify PFICs, U.S. persons that are shareholders, and transactions subject to PFIC taxation and to verify income inclusions, excess distributions and deferred tax amounts.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 131,250.

Estimated Burden Hours per Respondent: 45 minutes.

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 100,000 hours.

OMB Number: 1545–1817.

Form Number: IRS Form 8802.

Type of Review: Revision.

Title: Application for United States Residency Certification.

Description: All requests for U.S. residency certification must be received on Form 8802, Application for United States Residency Certification. This application must be sent to the Philadelphia Service Center. As proof of residency in the United States and of entitlement to the benefits of a tax treaty, U.S. treaty partner countries require a U.S. Government certification that you are a U.S. citizen, U.S. corporation, U.S. partnership, or resident of the United States for purposes of taxation.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 100,000.

Estimated Burden Hours per Respondent/Recordkeeper:

Recordkeeping—52 min.
Learning about the law or the form—43 min.
Preparing the form—54 min.
Copying, assembling, and sending the form to the IRS—34 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 308,000 hours.

Clearance Officer: Robert M. Coar, (202) 622–3579, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–32263 Filed 12–31–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 23, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 2, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1093.

Regulation Project Numbers: IA–56–87 and IA–53–87 Final.

Type of Review: Extension.

Title: Minimum Tax—Tax Benefit Rule.

Description: Section 58(h) of the 1954 Internal Revenue Code provides that the Secretary shall provide for adjusting tax preference items where such items provided no tax benefit for any taxable year. This regulation provides guidance for situations where tax preference items provided no tax benefit because of available credits and describes how to claim a credit or refund of minimum tax paid on such preferences.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Respondent: 12 minutes.

Frequency of Response: Other (one-time claim for credit or refund).

Estimated Total Reporting Burden: 40 hours.

OMB Number: 1545–1299.

Regulation Project Number: IA–54–90 Final.

Type of Review: Extension.

Title: Settlement Funds.

Description: The reporting requirements affect taxpayers that receive qualified settlement funds; they will be required to file income tax returns, estimated tax returns, and withholding tax returns. The information will facilitate taxpayer examinations.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, farms, Federal

Government, State, local or tribal government.

Estimated Number of Respondents: 1,500.

Estimated Burden Hours per Respondent: 25 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,542 hours.

OMB Number: 1545–1450.

Regulation Project Number: FI–59–91 Final.

Type of Review: Extension.

Title: Debt Instructions with Original Issue Discount; Contingent Payments; Anti-Abuse Rule.

Description: The regulations provide definitions, general rules, and reporting requirements for debt instruments that provide for contingent payments. The regulations also provide definitions, general rules, and recordkeeping requirements for integrated debt instruments.

Respondents: Individuals or households, business or other for-profit, State, local or tribal government.

Estimated Number of Respondents/ Recordkeepers: 180,000.

Estimated Burden Hours Respondent/ Recordkeeper: 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 89,000 hours.

OMB Number: 1545–1451.

Regulation Project Number: REG–248900–96 Final.

Type of Review: Extension.

Title: Definition of Private Activity Bonds.

Description: Section 103 provides generally that interest on certain State or local bonds is excluded from gross income. However, under sections 103(b)(1) and 141, interest on private activity bonds (other than qualified bonds) is not excluded. The regulations provide rules, for purposes of section 141, to determine how bond proceeds are measured and used and how debt service for those bonds is paid or secured.

Respondents: State, local or tribal government.

Estimated Number of Respondents/ Recordkeepers: 10,100.

Estimated Burden Hours Respondent/ Recordkeeper: 2 hours, 59 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 30,100 hours.

OMB Number: 1545–1562.

Revenue Procedure Number: Revenue Procedure 97–48.

Type of Review: Extension.

Title: Automatic Relief for Late S Corporation Elections.

Description: The Small Business Job Protection Act of 1996 provides the IRS with the authority to grant relief for late S corporation elections. This revenue procedure provides that, in certain situations, taxpayers whose S corporation election was filed late can obtain relief by filing Form 2553 and attaching a statement explaining that the requirements of the revenue procedure have been met.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Respondent: 1 hour.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 100 hours.

OMB Number: 1545–1700.

Form Number: IRS Form 8869.

Type of Review: Extension.

Title: Qualified Subchapter S Subsidiary Election.

Description: Effective for tax years beginning after December 31, 1996, Internal Revenue Code section 1361(b)(3) allows an S corporation to own a corporate subsidiary, but only if it is wholly owned. To do so, the parent S corporation must elect to treat the wholly-owned subsidiary as a qualified subchapter S subsidiary (QSub). Form 8869 is used to make this election.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 5,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—6 hr., 13 min.
Learning about the law or the form—53 min.
Preparing, copying, assembling, and sending the form to the IRS—1 hr., 2 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 40,750 hours.

OMB Number: 1545–1704.

Revenue Procedure Number: Revenue Procedure 2000–41.

Type of Review: Extension.

Title: Change in Minimum Funding Method.

Description: This revenue procedure provides a mechanism whereby a plan sponsor or plan administrator may obtain a determination from the Internal Revenue Service that its proposed change in the method of funding its pension plan(s) meets the standards of section 412 of the Internal Revenue Code.

Respondents: Business or other for-profit, not-for-profit institutions, State, local or tribal government.

Estimated Number of Respondents: 300.

Estimated Burden Hours Respondent: 18 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,400 hours.

OMB Number: 1545–1706.

Revenue Procedure Number: Revenue Procedure 2000–42.

Type of Review: Extension.

Title: Section 1503(d) Closing Agreement Requests.

Description: Revenue Procedure 2000–42 informs taxpayers of the information they must submit to request a closing agreement under Reg. § 1.1503–2(g)(2)(iv)(B)(2)(i) to prevent the recapture of dual consolidated losses (DCLs) upon the occurrence of certain triggering events.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Respondent: 100 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,000 hours.

OMB Number: 1545–1718.

Regulation Project Number: REG–106030–98 NPRM.

Type of Review: Extension.

Title: Source of Income from Certain Space and Ocean Activities; also, Source of Communications Income.

Description: The collection of information requirements in proposed sections 1.863–8(g) and in 1.863–9(h) are necessary for the service to audit taxpayers' returns to ensure that taxpayers are applying the regulations properly.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 250.

Estimated Burden Hours Respondent/ Recordkeeper: 5 hours.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,250 hours.

Clearance Officer: Robert M. Coar, (202) 622–3579, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–32264 Filed 12–31–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, January 28, 2004 from 12 p.m. e.s.t. to 1 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, January 28, 2004, from 12 p.m. e.s.t. to 1 p.m. e.s.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include various IRS issues.

Dated: December 29, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–32310 Filed 12–31–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 69, No. 1

Friday, January 2, 2004

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

48 CFR Parts 202, 204, 211, 212, 243, and 252

Defense Federal Acquisition Regulation Supplement; Unique Item Identification and Valuation

Correction

Rule document 03-31951 was inadvertently published in the Proposed Rules section in the issue of Tuesday, December 30, 2003, starting on page 75196. It should have appeared in the Rules and Regulations section

[FR Doc. C3–31951 Filed 12–31–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401 and 404

[USCG–2002–11288]

RIN 1625–AA38 (Formerly RIN 2115–AG30)

Rates for Pilotage on the Great Lakes

Correction

In rule document 03–30711 beginning on page 69564 in the issue of December 12, 2003, make the following correction:

On page 69570, in the table, in the third column, under the heading ''District Three'' in the third entry from the bottom, ''$25,00'' should read ''$25,000''

[FR Doc. C3–30711 Filed 12–31–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,

January 2, 2004

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0116–FRL–7549–7]

RIN 2060–AG56

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for miscellaneous metal parts and products surface coating operations located at major sources of hazardous air pollutants (HAP). The final rule implements section 112(d) of the Clean Air Act (CAA) by requiring these operations to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The final rule will protect air quality and promote the public health by reducing emissions of HAP from facilities in the miscellaneous metal parts and products surface coating source category. The organic HAP emitted by these operations include xylenes, toluene, methyl ethyl ketone (MEK), phenol, cresols/cresylic acid, glycol ethers (including ethylene glycol monobutyl ether (EGBE)), styrene, methyl isobutyl ketone (MIBK), and ethyl benzene. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, skin, and mucous membranes, and effects on the central nervous system, liver, and heart. In general, these findings have only been shown with concentrations higher than those typically in the ambient air. The final standards are expected to reduce nationwide organic HAP emissions from major sources in this source category by approximately 48 percent.

EFFECTIVE DATES: The final rule is effective January 2, 2004. The incorporation by reference of certain publications listed in the final rule is approved by the Director of the Federal Register as of January 2, 2004.

ADDRESSES: *Docket.* Docket ID No. OAR–2003–0116 (formerly Docket No. A–97–34) is located at the EPA Docket Center, EPA West (6102T), 1301 Constitution Avenue, NW., Room B–102, Washington, DC 20460.

Background Information Document. A background information document (BID) for the promulgated NESHAP may be obtained from the docket; the U.S. EPA Library (C267–01), Research Triangle Park, NC 27711, telephone (919) 541–2777; or from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487–4650. Refer to ''National Emission Standards for Hazardous Air Pollutants (NESHAP): Surface Coating of Miscellaneous Metal Parts and Products—Summary of Public Comments and Responses on Proposed Rule'' (EPA–453/R–03–008).

FOR FURTHER INFORMATION CONTACT: Ms. Kim Teal, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–5580; facsimile number (919) 541–5689; electronic mail address: *teal.kim@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The source category definition includes facilities that apply coatings to miscellaneous metal parts and products. In general, facilities that coat miscellaneous metal parts and products are covered under the North American Industrial Classification System (NAICS) codes listed in Table 1. However, facilities classified under other NAICS codes may be subject to the final standards if they meet the applicability criteria. Not all facilities classified under the NAICS codes in the following table will be subject to the final standards because some of the classifications cover products outside the scope of the NESHAP for miscellaneous metal parts and products.

TABLE 1.—CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE FINAL RULE

Category	NAICS	Examples of potentially regulated entities
Automobile Parts	335312, 336111, 336211, 336312, 33632, 33633, 33634, 33637, 336399.	Engine parts, vehicle parts and accessories, brakes, axles, etc.
Extruded Aluminum	331316, 331524, 332321, 332323	Extruded aluminum, architectural components, rod, and tubes.
Heavy Equipment	33312, 333611, 333618	Tractors, earth moving machinery.
Job Shops	332312, 332722, 332813, 332991, 332999, 334119, 336413, 339999.	Any of the products from the miscellaneous metal parts and products segments.
Large Trucks and Buses	33612, 336211	Large trucks and buses.
Magnet Wire	331319, 331422, 335929	Magnet wire.
Metal Buildings	332311	Prefabricated metal: buildings, carports, docks, dwellings, greenhouses, panels for buildings.
Metal Containers	33242, 81131, 322214, 326199, 331513, 332439	Drums, kegs, pails, shipping containers.
Metal Pipe and Foundry	331111, 331513, 33121, 331221, 331511	Plate, tube, rods, nails, spikes, etc.
Rail Transportation	33651, 336611, 482111	Brakes, engines, freight cars, locomotives.
Recreational Vehicles	3369, 331316, 336991, 336211, 336112, 336213, 336214, 336399.	Motorcycles, motor homes, semitrailers, truck trailers.
Rubber-to-Metal Products.	326291, 326299	Engine mounts, rubberized tank tread, harmonic balancers.
Structural Steel	332311, 332312	Joists, railway bridge sections, highway bridge sections.
Other Transportation Equipment.	336212, 336999, 33635, 56121, 8111, 56211	Miscellaneous transportation related equipment and parts.

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 coating operation is regulated by this action, you should examine the applicability criteria in § 63.3881 of the final rule.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2003–0116 (formerly docket A–97–34). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include

Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Docket Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select ''search,'' then key in the appropriate docket identification number.

WorldWide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule will be available on the WWW. Following the Administrator's signature, a copy of the final rule will be posted at *http://www.epa.gov/ttn/oarpg* on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules. 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. Under section 307(b)(1) of the CAA, judicial review of the final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 2, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline: The following outline is provided to aid in reading the preamble to the final rule:

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I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The Miscellaneous Metal Parts and Products (Surface Coating) category of major sources was listed on July 16, 1992 (57 FR 31576) under the Surface Coating Processes industry group. Major sources of HAP are those that emit or have the potential to emit considering controls equal to or greater than 9.1 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112(c)(2) of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources, based upon the criteria set out in section 112(d). The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is

achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing the final NESHAP, we considered control options that are more stringent than the MACT floor, taking into account consideration of the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. In the final rule, EPA is promulgating standards for both existing and new sources consistent with these statutory requirements.

C. What Are the Primary Sources of Emissions and What Are the Emissions?

The final NESHAP regulate emissions of organic HAP. Available emission data collected during the development of the final NESHAP show that the primary organic HAP emitted from the surface coating of miscellaneous metal parts and products include xylenes, toluene, MEK, phenol, cresols/cresylic acid, glycol ethers (including EGBE), styrene, MIBK, and ethyl benzene. These compounds account for approximately 90 percent of this category's nationwide organic HAP emissions.

The majority of organic HAP emissions from a facility engaged in miscellaneous metal parts and products surface coating operations can be attributed to the application, drying, and curing of coatings. The remaining emissions are primarily from cleaning operations. In most cases, organic HAP emissions from mixing, storage, and waste handling are relatively small. The organic HAP emissions associated with coatings (the term ''coatings'' includes protective and decorative coatings as well as adhesives) occur at several points. Coatings are most often applied either by using a spray gun in a spray booth or by dipping the substrate in a tank containing the coating. In a spray booth, volatile components evaporate from the coating as it is applied to the part and from the overspray. The coated part then passes through an open (flash-off) area where additional volatiles evaporate from the coating. Finally, the coated part passes through a drying/curing oven, or is allowed to air dry, where the remaining volatiles are evaporated.

Organic HAP emissions also occur from the activities undertaken during cleaning operations, including paint stripping, where solvent is used to remove coating residue or other unwanted materials. Cleaning in this industry includes cleaning of spray guns and transfer lines (*e.g.*, tubing or piping), tanks, and the interior of spray booths. Cleaning also includes applying solvents to manufactured parts prior to coating application and to equipment (*e.g.*, cleaning rollers, pumps, conveyors, etc.).

Mixing and storage are other sources of emissions. Organic HAP emissions can occur from displacement of organic vapor-laden air in containers used to store HAP solvents or to mix coatings containing HAP solvents. The displacement of vapor-laden air can occur during the filling of containers and can be caused by changes in temperature or barometric pressure, or by agitation during mixing.

D. What Are the Health Effects Associated With Organic HAP Emissions From the Surface Coating of Metal Parts and Products?

The HAP to be controlled with the final rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, irritation of the lung, eyes, and mucous membranes and effects on the central nervous system) and acute health disorders (*e.g.*, lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the central nervous system).

We do not have the type of current detailed data on each of the facilities covered by these emission standards for this source category, and the people living around the facilities, that would be necessary to conduct an analysis to determine the actual population exposures to the organic HAP emitted from these facilities and potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the final rule will reduce emissions and subsequent exposures.

II. Summary of the Final Rule

A. What Source Categories and Subcategories Are Affected by the Final Rule?

The final rule applies to you if you own or operate a miscellaneous metal parts and products surface coating facility that is a major source, or is located at a major source, or is part of a major source of HAP emissions. We define a miscellaneous metal parts and products surface coating facility as any facility engaged in the surface coating of any miscellaneous metal part or product. If application of coating to a substrate occurs, then surface coating also includes associated activities, such as surface preparation, cleaning, mixing, and storage. However, these associated activities do not comprise surface coating if the application of coating does not occur. Coating application with handheld, non-refillable aerosol containers, touch-up markers, marking pens, or the application of paper film or plastic film which may be pre-coated with an adhesive by the manufacturer is not a coating operation for the purposes of the final rule.

You will not be subject to the final rule if your miscellaneous metal parts and products surface coating facility is located at an area source. An area source of HAP is any facility that has the potential to emit HAP but is not a major source. You may establish area source status by limiting the source's potential to emit HAP through appropriate mechanisms available through your permitting authority.

The final rule does not apply to surface coating or a coating operation that meets any of the criteria listed below:

- A coating operation conducted at a source where the source uses only coatings, thinners and/or other additives, and cleaning materials that contain no organic HAP, as determined according to the procedures in the final rule.
- Surface coating that occurs at research or laboratory facilities, or is part of janitorial, building, and facility maintenance operations, or that occurs at hobby shops operated for noncommercial purposes.
- Coatings used in volumes of less than 189 liters (50 gallons (gal)) per year, provided that the total volume of coatings exempt does not exceed 946 liters (250 gal) per year at the facility.
- Surface coating of metal parts and products performed on-site at installations owned or operated by the Armed Forces of the United States (including the Coast Guard and the National Guard of any such State) or the National Aeronautics and Space Administration (NASA), or the surface coating of military munitions manufactured by or for the Armed Forces of the United States (including the Coast Guard and the National Guard of any such State).
- Surface coating where plastic is extruded onto metal wire or cable or metal parts or products to form a coating.

- Surface coating of metal components of wood furniture that meet the applicability criteria for wood furniture manufacturing (40 CFR part 63, subpart JJ).
- Surface coating of metal components of large appliances that meet the applicability criteria for large appliance surface coating (40 CFR part 63, subpart NNNN).
- Surface coating of metal components of metal furniture that meet the applicability criteria for metal furniture surface coating (40 CFR part 63, subpart RRRR; 68 FR 28606, May 23, 2003).
- Surface coating of metal components of wood building products that meet the applicability criteria for wood building products surface coating (40 CFR part 63, subpart QQQQ; 68 FR 31746, May 28, 2003).
- Surface coating of metal components of aerospace vehicles that meet the applicability criteria for aerospace manufacturing and rework (40 CFR part 63, subpart GG).
- The application of specialty coatings defined in appendix A to 40 CFR part 63, subpart GG to a metal aerospace vehicle or component.
- Surface coating of metal components of ships that meet the applicability criteria for shipbuilding and ship repair (40 CFR part 63, subpart II).
- Surface coating of metal using a web coating process that meets the applicability criteria for paper and other web coating (40 CFR part 63, subpart JJJJ).
- Surface coating of metal using a coil coating process that meets the applicability criteria for metal coil coating (40 CFR part 63, subpart SSSS).
- Surface coating of boats or metal parts of boats (including, but not limited to, the use of assembly adhesives) where the facility meets the applicability criteria for boat manufacturing facilities in the NESHAP for boat manufacturing (40 CFR part 63, subpart VVVV), except where the surface coating of the boat is a metal coating operation performed on personal watercraft or parts of personal watercraft.
- Surface coating of assembled on-road vehicles that meet the applicability criteria for the assembled on-road vehicle subcategory in the NESHAP for the surface coating of plastic parts and products (40 CFR part 63, subpart PPPP).
- Surface coating of metal components of automobiles and light-duty trucks that meet the applicability criteria for automobiles and light-duty trucks surface coating (40 CFR part 63, subpart IIII (scheduled for promulgation in February 2004).

If you perform surface coating of metal parts or products that meet the applicability criteria for both the Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII (scheduled for promulgation in February 2004) and these NESHAP, then you may comply with the requirements of the automobiles and light-duty trucks NESHAP for the surface coating of all your metal parts used in automobile or light-duty truck manufacturing in lieu of complying with each subpart separately.

The final rule contains five subcategories: General use coating, high performance coating, magnet wire coating, rubber-to-metal coating, and extreme performance fluoropolymer coating. The general use subcategory includes all surface coating operations in the miscellaneous metal parts and products source category that are not included in the other four subcategories. This includes operations that coat a wide variety of substrates, surfaces, and types of miscellaneous metal parts and products. It also includes asphalt/coal tar application to metal pipes. High performance coating is any coating that meets the definition of ''high performance architectural coating'' or ''high temperature coating.'' Magnet wire coatings, commonly referred to as magnet wire enamels, are applied to a continuous strand of wire which will be used to make turns (windings) in electrical devices such as coils, transformers, or motors. Magnet wire coatings provide high dielectric strength and turn-to-turn conductor insulation. This allows the turns of an electrical device to be placed in close proximity to one another which leads to increased coil effectiveness and electrical efficiency. Rubber-to-metal coating is any coating that contains heat-activated polymer systems in either solvent or water that, when applied to metal substrates, dries to a non-tacky surface and reacts chemically with the rubber and metal during a vulcanization process. Extreme performance fluoropolymer coating is a coating based on fluoropolymer resins that typically meets one or more performance criteria that include a nonstick low-energy surface, dry film lubrication, high resistance to chemical attack, extremely wide operating temperature, high electrical insulating properties, or that complies with government or third party specifications for health, safety, reliability, or performance. Each subcategory consists of all coating operations, including associated surface preparation, equipment cleaning, mixing, storage, and waste handling.

B. What Is the Relationship to Other Rules?

Affected sources that meet the applicability criteria in the final miscellaneous metal parts and products rule may also meet the applicability criteria of other coating NESHAP. For example, some facilities that coat plastic and metal parts using the same or different coatings, coating application processes, and conveyance equipment, either simultaneously or at alternative times could be subject to both the Miscellaneous Metal Parts and Products Surface Coating NESHAP and the Plastic Parts and Products Surface Coating NESHAP (40 CFR part 63, subpart PPPP).

In the final rule, we have minimized the burden of complying with multiple surface coating emission limits by offering two alternatives to complying separately with each applicable emission limit. The first alternative allows a facility to have all applicable surface coating operations comply with the emission limit that represents the predominant type of coating activity at that facility. Predominant activity means the coating activity that represents 90 percent or more of the surface coating activities at a facility. For example, if a facility is subject to both the Plastic Parts and Miscellaneous Metal Parts NESHAP and the activities subject to the Miscellaneous Metal Parts NESHAP account for 90 percent or more of the surface coating activity at the facility, then the facility may comply with the emission limitations for miscellaneous metal parts and products for both types of surface coating operations.

The predominant activity alternative may be applied if 90 percent or more of the surface coating is in the general use or magnet wire coating subcategory; however, this alternative is not available where high performance, rubber-to-metal, or extreme performance fluoropolymer coating represents the predominant activity. The emission limits for those three subcategories reflect specialized performance requirements and the need for higher HAP-containing materials. It would not be appropriate to apply emission limits specifically developed for unique performance characteristics to other types of coatings.

You must include all surface coating activities that meet the applicability criteria of a subcategory in a surface coating NESHAP and constitute more than 1 percent of total coating activities. Coating activities that meet the applicability criteria of a subcategory in a surface coating NESHAP but comprise

less than 1 percent of total coating activities need not be included in the determination of predominant activity but they must be included in the compliance calculations.

The second alternative allows a facility to calculate and comply with a facility-specific emission limit for each 12-month rolling average compliance period. The facility would use the relative amount of coating activity subject to each emission limit in each NESHAP to calculate a weighted, or composite, emission limit for that facility. Compliance with that facility-specific emission limit for all surface coating activities included in the facility-specific emission limit constitutes compliance with the emission limits in the Miscellaneous Metal Parts NESHAP, as well as other applicable NESHAP. As with the predominant activity alternative, you must include all surface coating activities that meet the applicability criteria of a subcategory in a surface coating NESHAP and constitute more than 1 percent of total coating activities. Coating activities that meet the applicability criteria of a subcategory in a surface coating NESHAP but comprise less than 1 percent of total coating activities need not be included in the facility-specific emission limit calculation but they must be included in the compliance calculations.

C. What Is the Affected Source?

We define an affected source as a stationary source, a group of stationary sources, or part of a stationary source to which a specific emission standard applies. The final rule defines the affected source as the collection of all operations associated with the surface coating of miscellaneous metal parts and products within each of the five subcategories (general use, high performance, magnet wire, rubber-to-metal, and extreme performance fluoropolymer). If application to a substrate occurs, these operations include preparation of a coating for application (*e.g.*, mixing with thinners); surface preparation of the miscellaneous metal parts and products (including paint stripping and the use of a cleaning material to remove dried coating); coating application and flash-off; drying and/or curing of applied coatings; cleaning of equipment used in surface coating; storage of coatings, thinners and/or other additives, and cleaning materials; and handling and conveyance of waste materials from the surface coating operations. The coating operation does not include the application of coatings using hand-held nonrefillable aerosol containers, touch-up markers, marking pens, or the application of paper film or plastic film that may be pre-coated with an adhesive by the manufacturer.

D. What Are the Emission Limits, Operating Limits, and Other Standards?

Emission Limits. We are limiting organic HAP emissions from each existing affected source using the emission limits in Table 2 of this preamble. For each new or reconstructed affected source, the final emission limits are given in Table 3 of this preamble. For each of the subcategories, the emission limit is expressed as the mass of organic HAP emissions per volume of coating solids used during each 12-month compliance period.

TABLE 2.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

Coating type	Emission limit (kilograms HAP/liter of coating solids)	Emission limit (lbs HAP/gal of coating solids)
General use subcategory	0.31	2.6
High performance subcategory	3.3	27.5
Magnet wire subcategory	0.12	1.0
Rubber-to-metal subcategory	4.5	37.7
Extreme performance fluoropolymer subcategory	1.5	12.4

TABLE 3.—EMISSION LIMITS FOR NEW AND RECONSTRUCTED AFFECTED SOURCES

Coating type	Emission limit (kilograms HAP/liter of coating solids)	Emission limit (lbs HAP/gal of coating solids)
General use subcategory	0.23	1.9
High performance subcategory	3.3	27.5
Magnet wire subcategory	0.050	0.44
Rubber-to-metal subcategory	0.81	6.8
Extreme performance fluoropolymer subcategory	1.5	12.4

You may choose from several compliance options in the final rule to achieve the emission limits. You could comply by applying materials (coatings, thinners and/or other additives, and cleaning materials) that meet the emission limits, either individually or collectively, during each compliance period. You could also use a capture system and add-on control device to meet the emission limits. You could also comply by using a combination of both approaches.

Operating Limits. If you reduce emissions by using a capture system and add-on control device (other than a solvent recovery system for which you conduct a liquid-liquid material balance), the operating limits apply to you. These limits are site-specific parameter limits that you determine during the initial performance test of the system. For capture systems that are not permanent total enclosures, you establish average volumetric flow rates or duct static pressure limits for each capture device (or enclosure) in each capture system. For capture systems that are permanent total enclosures, you establish limits on average facial velocity or pressure drop across openings in the enclosure.

For thermal oxidizers, you monitor the combustion temperature. For catalytic oxidizers, you monitor the temperature immediately before and after the catalyst bed, or you monitor the temperature before or after the catalyst bed and implement a site-specific inspection and maintenance plan for the catalytic oxidizer. For regenerative

carbon adsorbers for which you do not conduct a liquid-liquid material balance, you monitor the carbon bed temperature and the amount of steam or nitrogen used to desorb the bed. For condensers, you monitor the outlet gas temperature from the condenser. For concentrators, you monitor the temperature of the desorption gas stream and the pressure drop across the concentrator.

The site-specific parameter limits that you establish must reflect operation of the capture system and control devices during a performance test that demonstrates achievement of the emission limits during representative operating conditions.

Work Practice Standards. If you use an emission capture system and control device for compliance, you must develop and implement a work practice plan to minimize organic HAP emissions from mixing operations; storage tanks and other containers; and handling operations for coatings, thinners and/or other additives, cleaning materials, and waste materials. If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, you may be able to use your existing plan to satisfy the requirement for a work practice plan.

If you use a capture system and control device for compliance, you are required to develop and operate according to a startup, shutdown, and malfunction plan (SSMP) during periods of startup, shutdown, or malfunction of the capture system and control device.

The NESHAP General Provisions (40 CFR part 63, subpart A) codify certain procedures and criteria for all 40 CFR part 63 NESHAP and apply to you as indicated in the final rule. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, reporting and recordkeeping, performance testing, and monitoring. The final rule refers to individual sections of the General Provisions to emphasize key sections that are relevant. However, unless specifically overridden in the final rule, all of the applicable General Provisions requirements apply to you.

E. What Are the Testing and Initial Compliance Requirements?

Existing affected sources must be in compliance with the final rule no later than January 2, 2007. New and reconstructed sources must be in compliance upon initial startup of the affected source or by January 2, 2004, whichever is later. However, affected sources are not required to demonstrate compliance until the end of the initial compliance period when they will have accumulated the necessary records to document the rolling 12-month organic HAP emission rate.

Compliance with the emission limits is based on a rolling 12-month organic HAP emission rate determined each month. Each 12-month period is a compliance period. The initial compliance period, therefore, is the 12-month period beginning on the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period begins on the compliance date and extends through the end of that month plus the following 12 months. In other words, the initial compliance period could be almost 13 months long, but all subsequent compliance periods will be 12 months long. We have defined ''month'' as a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility at sources where data are based on a business accounting period.

Being ''in compliance'' means that the owner or operator of the affected source meets the requirements to achieve the final emission limitations during the initial compliance period. However, they will not have accumulated the records for the rolling 12-month organic HAP emission rate until the end of the initial compliance period. At the end of the initial compliance period, the owner or operator uses the data and records generated to determine whether or not the affected source is in compliance with the organic HAP emission limit and other applicable requirements for that period. If the affected source does not meet the applicable limit and other requirements, it is out of compliance for the entire compliance period.

Emission Limits. There are three options for complying with the final emission limits, and the testing and initial compliance requirements vary accordingly. You may choose to use one compliance option for the entire affected source, or you may use different compliance options for different coating operations within the affected source. You may also use different compliance options for the same coating operation at different times, different compliance options when different coatings are applied to the same part, or when the same coating is applied to different parts. However, you may not use different compliance options at the same time on the same coating operation.

Option 1: Compliant materials. This option is a pollution prevention option that allows you to easily demonstrate compliance by using low-HAP or non-HAP coatings and other materials. If you use coatings that, based on their organic HAP content, individually meet the kilogram (kg) (lb) organic HAP emitted per liter (gal) coating solids used levels in the applicable emission limits and you use non-HAP thinners and other additives and cleaning materials, this compliance option is available to you. For this option, we have minimized recordkeeping and reporting requirements. You may demonstrate compliance by using manufacturer's formulation data and readily available purchase records to determine the organic HAP content of each coating or other material and the amount of each material used. You do not need to perform any detailed emission rate calculations.

If you demonstrate compliance based on the coatings and other materials used, you demonstrate that the organic HAP content of each coating meets the emission limits for the appropriate subcategory as shown in Tables 2 and 3 of this preamble, and that you used no organic HAP-containing thinners and/or other additives, or cleaning materials. For example, if you are using the compliant materials option and your existing source has magnet wire, rubber-to-metal, extreme performance fluoropolymer, and general use coating operations, you demonstrate that: (1) Each coating used in the magnet wire coating operation has an organic HAP content no greater than 0.12 kg organic HAP/liter coating solids (1.0 lb organic HAP/gal coating solids) used; (2) each coating used in the rubber-to-metal coating operation has an organic HAP content no greater than 4.5 kg organic HAP/liter coating solids (37.7 lbs organic HAP/gal coating solids) used; (3) each coating used in the extreme performance fluoropolymer coating operation has an organic HAP content no greater than 1.5 kg organic HAP/liter coating solids (12.4 lbs HAP/gal coating solids) used; (4) each general use coating has an organic HAP content no greater than 0.31 kg organic HAP/liter coating solids (2.6 lbs HAP/gal coating solids) used; and (5) that you used no organic HAP-containing thinners and/or other additives, or cleaning materials. Note that ''no organic HAP'' is not intended to mean absolute zero. Materials that contain ''no organic HAP'' means materials that contain organic HAP levels below the levels specified in § 63.3941(a) of the final rule, which are typical Occupational

Safety and Health Administration (OSHA) reporting levels for material safety data sheets. These typical reporting levels only count organic HAP that are present at 0.1 percent or more by mass for OSHA-defined carcinogens and at 1.0 percent or more by mass for other compounds.

To determine the mass of organic HAP in coatings, thinners and/or other additives, and cleaning materials and the volume fraction of coating solids, you may rely on manufacturer's formulation data. You are not required to perform tests or analysis of the material if formulation data are available. Alternatively, you could use results from the test methods listed below. You may also use alternative test methods provided you get EPA approval in accordance with the NESHAP General Provisions, 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results prevail for compliance and enforcement purposes, unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

The following test methods are used to determine HAP content. For organic HAP content, use Method 311 of 40 CFR part 63, appendix A. You may also use nonaqueous volatile matter as a surrogate for organic HAP, which includes all organic HAP plus all other organic compounds, excluding water. If you choose this option, use Method 24 of 40 CFR part 60, appendix A. If you are determining HAP content for reactive adhesives (that is, adhesives in which some of the HAP react to form solids and are not emitted to the atmosphere), you may use the alternative to Method 24 that is included in 40 CFR part 63, subpart PPPP, appendix A. For determining volume fraction of coating solids, use ASTM Method D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' or ASTM Method D6093–97 (Reapproved 2003), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer,'' an approved alternative method, or calculations based on the volume of the volatile fraction.

Option 2: Compliance based on the emission rate without add-on controls. This option is a pollution prevention option that allows you to demonstrate compliance based on the organic HAP contained in the mix of coatings, thinners and/or other additives, and cleaning materials you use. This option offers the flexibility to use some individual coatings that do not, by themselves, meet the kg (lb) organic HAP emitted per liter (gal) coating solids used levels in the applicable emission limits if you use other low-HAP or non-HAP coatings such that overall emissions from the affected source over a 12-month period meet the emission limits. You must use this option if you use HAP-containing thinners and/or other additives, and cleaning materials and do not have add-on controls. You keep track of the mass of organic HAP in each coating, thinner or other additive, and cleaning material, and the amount of each material you use in your affected source each month of the compliance period. You use this information to determine the total mass of organic HAP in all coatings, thinners and/or other additives, and cleaning materials divided by the total volume of coating solids used during the compliance period. You demonstrate that your emission rate (in kg (lb) organic HAP emitted per liter (gal) coating solids used) meets the applicable emission limit. You may use readily available purchase records and manufacturer's formulation data to determine the amount of each coating or other material you used and the organic HAP in each material. The final rule contains equations that show you how to perform the calculations to demonstrate compliance.

If you demonstrate compliance using Option 2, you are required to:

- Determine the quantity of each coating, thinner and/or other additive, and cleaning material used.
- Determine the mass of organic HAP in each coating, thinner and other additive, and cleaning material using the same types of data and methods previously described for Option 1, including the alternative methods for reactive coatings. You may rely on manufacturer's formulation data or you may choose to use test results as described under Option 1.
- Determine the volume fraction of coating solids for each coating using the same types of data or methods described under Option 1. In this option, you may include the solids from powder coatings in the compliance calculations. To determine the volume of solids in powder coatings from their weight, use ASTM Method D5965–02, ''Standard Test Method for Specific Gravity of Coating Powders.''
- Calculate the total mass of organic HAP in all materials and total volume of coating solids used each month. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the total mass of organic HAP emissions and total volume of coating solids used for the initial compliance period by adding together all the monthly values for mass of organic HAP and for volume of coating solids used for the 12 months of the initial compliance period.
- Calculate the ratio of the total mass of organic HAP emitted for the materials used to the total volume of coating solids used (kg (lb) organic HAP emitted per liter (gal) of coating solids used) for the initial compliance period.
- Record the calculations and results and include them in your Notification of Compliance Status.

Note that if you choose to use this option for a particular coating operation rather than for all coating operations at the source, you calculate the organic HAP emission rate using just the materials used in that operation. Similarly, if your facility has multiple coating operations using this option (*e.g.*, a high performance coating operation, a magnet wire coating operation, a rubber-to-metal coating operation, and a general use coating operation), you do a separate calculation for each coating operation to show that each coating operation meets its emission limit. If you are complying with a facility-specific emission limit, you include all coating operations that are subject to the facility-specific emission limit in the compliance calculations.

Option 3: Compliance based on using a capture system and add-on control device. This option allows sources to use a capture system and an add-on pollution control device, such as a combustion device or a recovery device, to meet the emission limits. While we believe that, based on typical emission characteristics, most sources will not use control devices, we are providing this option for sources that use control devices. Fewer than 10 percent of the existing sources for which we have data use control devices. Under this option, testing is required to demonstrate the capture system and control device efficiencies. Alternatively, you may conduct a liquid-liquid material balance to demonstrate the amount of organic HAP collected by your recovery device. The final rule provides equations showing you how to use records of materials usage, organic HAP contents of each material, capture and control efficiencies, and coating solids content to calculate your emission rate during the compliance period.

If you demonstrate compliance based on this option, you demonstrate that your emission rate considering controls (in kg (lb) organic HAP emitted per liter (gal) of coating solids used) is less than the applicable emission limit. For a capture system and add-on control device, other than a solvent recovery system for which you conduct a liquid-liquid material balance, your testing and initial compliance requirements are as follows:

- Conduct an initial performance test to determine the capture and control efficiencies of the equipment and to establish operating limits to be achieved on a continuous basis. The performance test must be completed no later than the compliance date for existing sources and 180 days after the compliance date for new and reconstructed sources.
- Determine the mass of organic HAP in each coating and other material, and the volume fraction of coating solids for each coating used during each month of the initial compliance period.
- Calculate the total mass of organic HAP in all coatings and other materials, and total volume of coating solids used each month in the controlled operation or group of coating operations. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the organic HAP emissions from the controlled coating operations each month using the capture and control efficiencies determined during the performance test, and the total mass of organic HAP in materials used in controlled coating operations that month.
- Calculate the total mass of organic HAP emissions and total volume of coating solids used for the initial compliance period by adding together all the monthly values for mass of organic HAP emissions and for volume of coating solids for the 12 months in the initial compliance period.
- Calculate the ratio of the total mass of organic HAP emissions to the total volume of coating solids used during the initial compliance period.
- Record the calculations and results and include them in your Notification of Compliance Status.
- Develop and implement a work practice plan to minimize emissions from storage, mixing, and handling of organic HAP-containing materials.

Note that if you choose to use this option for a particular coating operation rather than for the entire affected source, you calculate the organic HAP emission rate using just the materials used in that operation. Similarly, if your facility has multiple coating operations using this option (*e.g.*, a high performance coating operation, a rubber-to-metal coating operation, an extreme performance fluoropolymer coating operation, and a general use coating operation), you do a separate calculation for each coating operation to show that each coating operation meets its emission limit. If you are complying with a facility-specific emission limit, you would include all coating operations that are subject to the facility-specific emission limit in the compliance calculations.

If you use a capture system and add-on control device, other than a solvent recovery system for which you conduct liquid-liquid material balances, you use specified test methods to determine both the efficiency of the capture system and the emission reduction efficiency of the control device. To determine the capture efficiency, you would either verify the presence of a permanent total enclosure using EPA Method 204 of 40 CFR part 51, appendix M (and all materials must be applied and dried within the enclosure); or use one of three protocols in § 63.3965 of the final rule to measure capture efficiency. If you have a permanent total enclosure and all materials are applied and dried within the enclosure and you route all exhaust gases from the enclosure to a control device, you assume 100 percent capture. Magnet wire coating operations may, with approval, conduct representative capture efficiency testing of one magnet wire coating machine out of a group of identical or very similar magnet wire coating machines rather than testing every individual magnet wire coating machine.

To determine the emission reduction efficiency of the control device, you conduct measurements of the inlet and outlet gas streams. The test consists of three runs, each run lasting 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

- Method 1 or 1A for selection of the sampling sites.
- Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate.
- Method 3, 3A, or 3B for gas analysis to determine dry molecular weight.
- Method 4 to determine stack moisture.
- Method 25 or 25A to determine organic volatile matter concentration. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, could be used.

An alternative procedure is provided in appendix A of the final rule for determining the destruction efficiency of oxidizers used to control emissions from magnet wire coating machines. This procedure uses material consumption and material organic volatile content, adjusted to account for any uncaptured emissions, to determine the organic volatile content of the inlet stream to the control device. Magnet wire coating operations may, with approval, conduct representative control device efficiency testing of one magnet wire coating machine out of a group of identical or very similar magnet wire coating machines rather than testing every individual magnet wire coating machine.

If you use a solvent recovery system, you could choose to determine the overall control efficiency using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you are required to measure the amount of all materials used in the controlled coating operations served by the solvent recovery system during each month of the initial compliance period, and to determine the total volatile matter contained in these materials. You also measure the amount of volatile matter recovered by the solvent recovery system during each month of the initial compliance period. Then you compare the amount recovered to the amount used to determine the overall control efficiency each month and apply this efficiency to the total mass of organic HAP in the materials used to determine total organic HAP emissions for the month. You total these 12 monthly organic HAP emission values and divide by the total of the 12 monthly values for coating solids used to calculate the emission rate for the 12-month initial compliance period. You record the calculations and results and include them in your Notification of Compliance Status.

Operating Limits. As mentioned above, you establish operating limits as part of the initial performance test of a capture system and control device, other than a solvent recovery system for which you conduct liquid-liquid material balances. The operating limits are the minimum or maximum (as applicable) values achieved for capture systems and control devices during the most recent performance test, conducted under representative conditions, that demonstrated compliance with the emission limits.

The final rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry. You are required to install,

calibrate, maintain, and continuously operate all monitoring equipment according to manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in § 63.3968 of the final rule. If you use control devices other than those identified in the final rule, you submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal or catalytic oxidizer, you continuously monitor the appropriate temperature and record it at least every 15 minutes. For thermal oxidizers, the temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit is the average temperature measured during the performance test and for each consecutive 3-hour period; the average temperature has to be at or above this limit. For catalytic oxidizers, temperature monitors are placed immediately before and after the catalyst bed. The operating limits are the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed during the performance test. For each 3-hour period, the average temperature and the average temperature difference must be at or above these limits. Alternatively, if you develop and implement an inspection and maintenance plan for the catalytic oxidizer, then you are allowed to monitor only the temperature before the catalyst bed and meet only the temperature operating limit before the catalyst bed and are not required to monitor the difference across the bed.

An alternative procedure for monitoring catalytic oxidizers on magnet wire coating machines is provided in appendix A of the final rule. This alternative allows you to develop and implement an inspection and maintenance plan as described in appendix A of the final rule and to measure the temperature either before or after the catalyst bed and compare the measured temperature to the operating limit.

If you use a regenerative carbon adsorber and do not conduct liquid-liquid material balances to demonstrate compliance, you monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration. The operating limits are the carbon bed temperature at the time the carbon bed is returned to service (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a condenser and do not conduct liquid-liquid material balances to demonstrate compliance, you monitor the outlet gas temperature to ensure that the air stream is being cooled to a low enough temperature. The operating limit is the average condenser outlet gas temperature measured during the performance test and for each consecutive 3-hour period, the average temperature must be at or below this limit.

If you use a concentrator, you monitor the temperature of the desorption concentrate stream and the pressure drop across the concentrator. These values must be recorded at least once every 15 minutes. The operating limits must be the 3-hour average temperature (to be met as a minimum) and the 3-hour average pressure drop (to be met as a minimum) measured during the performance test.

For each capture system that is not a permanent total enclosure, you establish operating limits for gas volumetric flow rate or duct static pressure for each enclosure or capture device. The operating limit is the average volumetric flow rate or duct static pressure during the performance test, to be met as a minimum. For each capture system that is a permanent total enclosure, the operating limit requires the average facial velocity of air through all natural draft openings to be at least 200 feet per minute or the pressure drop across the enclosure to be at least 0.007 inches water.

An alternative procedure for monitoring capture systems on magnet wire coating machines is provided in appendix A of this rule. This alternative requires you to install an alarm or interlock which will be triggered either when any oven exhaust fan is not operating or the oven is overheating. This alternative also requires you to confirm every 6 months that the oven is operating at negative pressure.

Work Practices. If you use a capture system and control device for compliance, you are required to develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions from storage, mixing, material handling, and waste handling operations. This plan must include a description of all steps taken to minimize emissions from these sources (*e.g.*, using closed storage containers, practices to minimize emissions during filling and transfer of contents from containers, using spill minimization techniques, placing solvent-laden cloths in closed containers immediately after use, etc.). You must make the plan available for inspection if the Administrator requests to see it.

If you use a capture system and control device for compliance, you are required to develop and operate according to a SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

F. What Are the Continuous Compliance Provisions?

Emission Limits. If you use the compliant materials option (Option 1), you demonstrate continuous compliance if each coating meets the applicable emission limit and you use no organic HAP-containing thinners and/or other additives, or cleaning materials. If you use the emission rate without add-on controls option (Option 2), you demonstrate continuous compliance if, for each 12-month compliance period, the ratio of kg (lb) organic HAP emitted to liter (gal) coating solids used is less than or equal to the applicable emission limit. You follow the same procedures for calculating the organic HAP emitted to coating solids used ratio that you used for the initial compliance period.

For each coating operation on which you use a capture system and control device (Option 3), other than a solvent recovery system for which you conduct a liquid-liquid material balance, you use the continuous parameter monitoring results for the month as part of the determination of the mass of organic HAP emissions. If the monitoring results indicate no deviations from the operating limits and there were no bypasses of the control device, you assume the capture system and control device are achieving the same percent emission reduction efficiency as they did during the most recent performance test in which compliance was demonstrated. You then apply this percent reduction to the total mass of organic HAP in materials used in the controlled coating operations to determine the emissions from those operations during the month. If there were any deviations from the operating limits during the month or any bypasses of the control device, you account for them in the calculation of the monthly emissions by assuming the capture system and control device were achieving zero emission reduction during the periods of deviation, unless you have other data indicating the actual efficiency of the emission capture system and add-on control device, and the use of these data is approved by your permitting authority. Determine the organic HAP emission rate by

dividing the total mass of organic HAP emissions for the 12-month compliance period by the total volume of coating solids used during the 12-month compliance period. Every month, you calculate the emission rate for the previous 12-month period.

For each coating operation on which you use a solvent recovery system and conduct a liquid-liquid material balance each month, you use the liquid-liquid material balance to determine control efficiency. To determine the overall control efficiency, you must measure the amount of all materials used during each month and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the month, calculate the overall control efficiency, and apply it to the total mass of organic HAP in the materials used to determine total organic HAP emissions each month. Then you determine the 12-month organic HAP emission rate in the same manner described above.

Operating Limits. If you use a capture system and control device, the final rule requires you to achieve on a continuous basis the operating limits you establish during the performance test. If the continuous monitoring shows that the capture system and control device are operating outside the range of values established during the performance test, you have deviated from the established operating limits.

If you operate a capture system and control device with bypass lines that could allow emissions to bypass the control device, you demonstrate that captured organic HAP emissions within the affected source are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following five monitoring procedures:

- Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device.
- Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating.
- Valve closure monitoring to ensure any bypass line valve or damper is closed when the control device is operating.
- Automatic shutdown system to stop the coating operation when flow is diverted from the control device.
- Flow direction indicator to provide a record of whether the exhaust stream is flowing toward the control device.

A deviation would occur for any period of time the bypass monitoring indicates that emissions are not routed to the control device.

Work Practices. If you use an emission capture system and control device for compliance, you are required to implement, on an ongoing basis, the work practice plan you developed during the initial compliance period. If you did not develop a plan for reducing organic HAP emissions or you do not implement the plan, this would be a deviation from the work practice standard.

If you use a capture system and control device for compliance, you are required to operate according to your SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

G. What Are the Notification, Recordkeeping, and Reporting Requirements?

You are required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in the final rule. The General Provisions notification requirements include: initial notifications, notification of performance test if you are complying using a capture system and control device, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports.

Initial Notifications. If you own or operate an existing affected source, you must send a notification to the EPA Regional Office in the region where your facility is located and to your State agency no later than 1 year after publication of the final rule in the **Federal Register**. For new and reconstructed sources, you must send the notification within 120 days after the date of initial startup or 120 days after publication of the final rule, whichever is later. That report notifies us and your State agency that you have an existing affected source that is subject to the final standards or that you have constructed a new affected source. Thus, it allows you and the permitting authority to plan for compliance activities. You also need to send a notification of planned construction or reconstruction of a source that would be subject to the final rule and apply for approval to construct or reconstruct.

Notification of Performance Test. If you demonstrate compliance by using a capture system and control device for which you do not conduct a liquid-liquid material balance, you must conduct a performance test. The performance test is required no later than the compliance date for an existing affected source. For a new or reconstructed affected source, the performance test is required no later than 180 days after startup or 180 days after **Federal Register** publication of the final rule, whichever is later. You must notify EPA (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin and submit a report of the performance test results no later than 60 days after the test.

Notification of Compliance Status. You must submit a Notification of Compliance Status within 30 days after the end of the initial 12-month compliance period. In the notification, you must certify whether each affected source has complied with the final standards; identify the option(s) you used to demonstrate initial compliance; summarize the data and calculations supporting the compliance demonstration; and provide information on any deviations from the emission limits, operating limits, or other requirements.

If you elect to comply by using a capture system and control device for which you conduct performance tests, you must provide the results of the tests. Your notification must also include the measured range of each monitored parameter, the operating limits established during the performance test, and information showing whether the source has complied with its operating limits during the initial compliance period.

If you are complying with a single emission limit representing the predominant surface coating activity under § 63.3890(c)(1) of the final rule, include all calculations and supporting documentation for the predominant activity determination. If you are complying with a facility-specific emission limit under § 63.3890(c)(2) of the final rule, include the calculation of the facility-specific emission limit and any supporting information.

Recordkeeping Requirements. You must keep records of reported information and all other information necessary to document compliance with the final rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site or be readily accessible from the site (for example, by a computer network); the other 3 years' records may be kept off-site. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

Depending on the compliance option that you choose, you may need to keep records of the following:

- Organic HAP content or volatile organic matter content and coating

solids content (for all compliance options).

• Quantity of the coatings, thinners and/or other additives, and cleaning materials used during each compliance period. If you are using the compliant material option for all coatings at the source, you may maintain purchase records for each material used rather than a record of the volume used.

• For the emission rate (with or without add-on controls) compliance options, calculations of your emission rate for each 12-month compliance period.

• All documentation supporting initial notifications and notifications of compliance status.

If you demonstrate compliance by using a capture system and control device, you must keep records of the following:

• All required measurements, calculations, and supporting documentation needed to demonstrate compliance with the standards.

• All results of performance tests and parameter monitoring.

• All information necessary to demonstrate conformance with your plan for minimizing emissions from mixing, storage, and waste handling operations.

• All information necessary to demonstrate conformance with the affected source's SSMP when the plan procedures are followed.

• The occurrence and duration of each startup, shutdown, or malfunction of the emission capture system and control device.

• Actions taken during startup, shutdown, and malfunction that are different from the procedures specified in the affected source's SSMP.

• Each period during which a CPMS is malfunctioning or inoperative (including out-of-control periods).

The final rule requires you to collect and keep records according to certain minimum data requirements for the CPMS. Failure to collect and keep the specified minimum data would be a deviation that is separate from any emission limits, operating limits, or work practice standards.

Deviations, as determined from these records, must be recorded and also reported. A deviation is any instance when any requirement or obligation established by the final rule including, but not limited to, the emission limits, operating limits, and work practice standards, is not met.

If you use a capture system and control device to reduce organic HAP emissions, you must make your SSMP available for inspection if the Administrator requests to see it. The plan stays in your records for the life of the affected source or until the source is no longer subject to the final standards. If you revise the plan, you must keep the previous superseded versions on record for 5 years following the revision.

If you are using the predominant activity or facility-specific emission limit alternative, you must keep the records of the data and calculations needed to determine the predominant activity or to calculate the facility-specific emission limit for your facility.

Periodic Reports. Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you include them in the report as follows:

• Report each deviation from the emission limit.

• Report each deviation from the work practice standards if you use an emission capture system and control device.

• If you use an emission capture system and control device, other than a solvent recovery system for which you conduct liquid-liquid material balances, report each deviation from an operating limit and each time a bypass line diverts emissions from the control device to the atmosphere.

• Report other specific information on the periods of time the deviations occurred.

You also have to include in each semiannual report an identification of the compliance option(s) you used for each affected source and any time periods when you changed to another compliance option.

Other Reports. You are required to submit reports for periods of startup, shutdown, or malfunction of the capture system and control device. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your SSMP, you report those procedures with your semiannual reports in addition to immediate reports required by 40 CFR 63.10(d)(5)(ii).

III. What Are the Significant Differences From Proposal?

A. Applicability

We have revised the applicability section to clarify who is subject to the final rule. Specifically, the section includes activities associated with coating operations such as surface preparation, cleaning, mixing, and storage as long as these activities are associated with coating application at the facility.

We have included an extreme performance fluoropolymer coatings subcategory in the final rule. This new subcategory establishes a specific emission limit for coatings that are formulated systems based on fluoropolymer resins, which often contain ''bonding'' matrix polymers dissolved in nonaqueous solvents as well as other ingredients. Extreme performance fluoropolymer coatings are typically used when one or more critical performance criteria are required including, but not limited to, a nonstick low-energy surface, dry film lubrication, high resistance to chemical attack, extremely wide operating temperature, high electrical insulating properties, or that the surface complies with government (*e.g.*, U.S. Department of Agriculture, Food and Drug Administration (FDA)) or third party specifications for health, safety, reliability, or performance.

We have revised the scope of the high performance subcategory to remove ''military combat, tactical, and munitions coating'' from the definition of high performance coating. As indicated in this preamble, the surface coating of metal parts and products performed on-site at installations owned or operated by the Armed Forces of the United States, or the surface coating of military munitions manufactured by or for the Armed Forces of the United States, will be addressed in the NESHAP for defense land systems and miscellaneous equipment that is currently under development.

We have clarified that when determining whether your facility is below the applicability threshold, you may exclude coatings that meet the definition of non-HAP coating when determining whether you use 946 liters (250 gal) per year, or more, of coatings in the surface coating of miscellaneous metal parts and products (§ 63.3881(b) of the final rule). Thus, a facility using mostly non-HAP coatings and less than 250 gal per year of HAP-containing coatings will not be subject to the final rule. In addition, we have included a definition of ''non-HAP coating'' in the final rule.

B. Scope of Category

We have clarified the scope of the final rule to exclude surface coating operations using only coatings, thinners and other additives, and cleaning materials that contain no organic HAP. We also excluded surface coating of metal that is subject to several other NESHAP. We also included a provision that allows sources that meet the applicability criteria of both the final rule and the automobiles and light-duty

trucks NESHAP to comply with the automobiles and light-duty trucks NESHAP for all their surface coating operations associated with the manufacturing of automobiles or light-duty trucks in lieu of complying with each subpart separately.

C. Emission Limits

The emission limits remain as proposed, except for the addition of the extreme performance fluoropolymer subcategory, which must limit organic HAP emissions to no more than 1.5 kg organic HAP/liter coating solids (12.4 lbs HAP/gal coating solids) used during each 12-month compliance period.

D. Method for Determining HAP Content

In the final rule, we have included a method for determining the HAP content for reactive adhesives based on the HAP actually emitted, rather than determining the mass fraction of organic HAP in the coatings using Method 311 or Method 24. Facilities may use the alternative method for reactive adhesives contained in appendix A to the final rule for plastic parts and products. In addition, we included a provision for reactive adhesives to allow facilities to rely on manufacturer's data that expressly states the organic HAP mass fraction emitted.

We have included an option to calculate the volume fraction of coating solids based on the mass fraction and density of the volatile compounds in the coating. This method is an alternative to using ASTM Method D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' or ASTM Method D6093–97 (Reapproved 2003), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer,'' to measure the volume solids.

We have also included a method, ASTM Method D5965–02, ''Standard Test Method for Specific Gravity of Coating Powders,'' to determine the density of powder coatings if a facility chooses to include the solids from powder coatings in their compliance calculations.

E. Deviations From Operating Parameters

The proposed rule stated that if your add-on control system deviates from the operating limit specified in Table 1 to subpart MMMM of 40 CFR part 63, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. We have written the final rule to allow the use of other data to indicate the actual efficiency of the emission capture system and add-on control device, as long as the use of these data is approved by the respective permitting authority.

F. New Alternatives To Facilitate Compliance With Multiple Coating NESHAP and Multiple Emission Limits

The final rule allows facilities subject to more than one surface coating emission limit to comply with each applicable emission limit separately or to adopt one of two alternatives. The first alternative allows all coating operations to comply with the emission limit representing the predominant surface coating activity at the facility (the predominant activity means the surface coating activity representing 90 percent or more of the total surface coating activity). The predominant activity approach is also available for sources that are subject to more than one subcategory emission limit. That is, a source may determine which subcategory represents 90 percent or more of the coating activities that take place at the facility, and then have all coating operations at the facility comply with the emission limit that represents the predominant activity.

The second alternative allows a facility to comply with a facility-specific emission limit calculated from the relative amount of coating activity that is subject to individual emission limits. The facility-specific emission limit may include separate emission limits from one or more applicable NESHAP.

You must include all surface coating activities that meet the applicability criteria of a subcategory in a surface coating NESHAP and constitute more than 1 percent of total coating activities. Coating activities that meet the applicability criteria of a subcategory in a surface coating NESHAP but comprise less than 1 percent of total coating activities need not be included in the facility-specific emission limit calculation but they must be included in the compliance calculations.

Another approach that you may use is the equivalency by permit option in 40 CFR part 63, subpart E (§ 63.94). Under this approach, you may design an emissions control program that is suited for your process or plant as long as you can demonstrate that your program will achieve the same emissions reductions as the NESHAP. You must then work with your State, local, or tribal air pollution control agency to submit an equivalency demonstration. This equivalency demonstration will be reviewed by the appropriate EPA Regional Office. The equivalency demonstration is approved as part of the operating permit approval process. For more information, please see the section 112(l) website at *http://www.epa.gov/ttn/atw/112(l)/112-lpg.html.*

G. Initial and Continuous Compliance Demonstrations for Magnet Wire Sources

In the final rule we have provided alternative testing and monitoring requirements for magnet wire coating operations. These alternative requirements are presented in appendix A to this rule.

An alternative procedure is provided for determining the destruction efficiency of oxidizers used to control emissions from magnet wire coating machines. This procedure uses material consumption and material organic volatile content, adjusted to account for any uncaptured emissions, to determine the organic volatile content of the inlet stream to the control device.

In addition, magnet wire coating operations may, with approval, conduct representative capture efficiency and control device efficiency testing of one magnet wire coating machine out of a group of identical or very similar magnet wire coating machines rather than testing every individual magnet wire coating machine.

An alternative procedure is provided for monitoring capture systems on magnet wire coating machines. This alternative requires you to install an alarm or interlock which will be triggered either when any oven exhaust fan is not operating or the oven is overheating. This alternative also requires you to confirm every 6 months that the oven is operating at negative pressure.

An alternative procedure is provided for monitoring catalytic oxidizers on magnet wire coating machines. This alternative allows you to develop and implement an inspection and maintenance plan as described in appendix A to this rule and to measure the temperature either before or after the catalyst bed and compare the measured temperature to the operating limit. In addition to the inspection and maintenance plan, you must either perform periodic catalyst activity checks, or check the concentration of organic compounds in the oven exhaust.

IV. What Are the Responses to Significant Comments?

For the full set of comment summaries and responses, refer to the BID (''National Emission Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products,'' August 2003, EPA–453/R–03–008), which contains EPA's

responses to each public comment and is available in Docket ID No. OAR–2002–0116 (formerly Docket No. A–97–34).

A. Applicability and Scope of Source Category

Comment: Two commenters requested that powder coatings be specifically excluded from the final rule. One commenter stated that powder coatings typically have no HAP or trace amounts of HAP that would easily comply with the emission limits. One commenter stated that powder coating operations should not be subject to a recordkeeping and reporting burden that would have no resulting environmental benefit. One commenter suggested that including powder coatings would reduce ''expected'' HAP reductions from these NESHAP and that averaging could be limited to liquid coatings only.

Response: Powder coatings are included in the definition of a coating in the final rule. However, if a source is using only powder coating or powder coating and less than 250 gal of HAP-containing coating, it would be excluded from all rule requirements based on the use of non-HAP coating and less than 250 gal of HAP-containing coating. If a source is using greater than 250 gal of HAP-containing coating and also has a powder coating line, it may choose to comply with the compliant material option for the powder coating line. The records necessary to demonstrate compliance with the compliant material option are significantly less than required under one of the emission rate options. Alternatively, if a source chooses to use either of the emission rate options, powder coatings may be included in the compliance calculations for the emission rate options. Inclusion of powder coatings in the compliance calculations was intended to serve as an incentive for sources to use powder coatings in reducing their overall emission level. We expect that increased use of powder coatings will promote this technology as a pollution prevention alternative and will result in greater emission reductions than if powder coatings were specifically excluded from compliance calculations. If a source chooses to omit powder coatings from the compliance calculations, the source could document that the powder coatings are in compliance under the compliant materials option since powder coatings are essentially 100 percent solids.

Comment: Several commenters requested that EPA revise the definition of ''protective oil'' to clarify whether specific materials cited by the commenters are considered protective oils. One commenter requested that EPA revise the definition of protective oil to clarify that protective oils include three specific coatings: temporary protective coatings on metal products to protect them from rust and corrosion during shipment and storage but that leave a soft removable solid film, magnet wire lubrication that is put on the wire before it is wound on a spool and forms a wax film, and bar seal lubrication that prevents hand gloves from sticking to generator parts during taping.

Another commenter requested that EPA modify the definition of protective oil to specifically include carrier solvents. The commenter claimed that skin lubricants used on hypodermic needles do not meet the definition of a coating because they do not cure and form a solid film. The commenter stated that the skin lubricant is a viscous liquid that uses a HAP as a carrier and remains liquid after the HAP evaporates.

Another commenter requested that aqueous-based rust inhibitors should not be considered coatings under the final rule and that this should be clarified in the definition of ''coating.'' The commenter contended that the rule as proposed currently exempts protective oil-type rust inhibitors and should also exempt aqueous-based materials used for the same purpose.

Response: We agree with the commenters that the definition of protective oils should be written to include those oils that include a carrier solvent and that do not form a solid film (*e.g.*, skin lubricants on hypodermic needles). The definition of protective oils has also been written to include magnet wire lubrication and soft temporary protective coatings that are removed prior to installation or further assembly of a part or component. Those materials that do not form a solid film are not typically considered coatings. Aqueous rust inhibitors, which are typically acids or bases, are already excluded from the definition of coating as acids or bases.

We do not feel it is necessary to specifically include bar seal lubricants used to prevent hand gloves from sticking to generator parts during taping. This is a specific process using the bar seal lubricant in a way that qualifies as a protective oil by providing lubrication.

Comment: Two commenters asked for clarification on whether non-HAP coatings should be included in determining whether a facility is subject to the final rule. The commenters noted that § 63.3881(c)(5) of the proposed rule exempts coatings used in amounts of less than 50 gal per year, provided the total amount that is exempt does not exceed 250 gal per year. The commenters asked, for example, whether a facility using 10,000 gal of non-HAP coating and less than 50 gal each of several other HAP-containing coatings totaling less than 250 gal per year would be subject to the final rule.

Response: In response to comment, we have written the final rule to clearly state that the use of non-HAP materials (as defined in the final rule) does not count toward the 250 gal applicability threshold in the final rule. This would avoid a situation where a source would be subject to the final rule even though it was using primarily non-HAP coatings and less than 250 gal per year of HAP-containing coatings. Because the purpose of the final rule is to control HAP, we agree that it is appropriate to consider only HAP-containing coatings in determining whether a source meets the applicability threshold. The final rule includes a definition of non-HAP coating, which is a coating containing less than 0.1 percent by weight of each individual organic HAP that is an OSHA-defined carcinogen and less than 1.0 percent by weight of all other individual HAP.

Comment: Several commenters requested clarification on the exemption for facility maintenance surface coating operations. One commenter requested clarification that surface coating of equipment and tools used to manufacture parts and products are not covered by the final rule. The commenter noted that miscellaneous metal parts and products are defined as including ''industrial machinery'' and ''other industrial products.'' The commenter requested that an additional paragraph be added to § 63.3881(c) of the final rule to clarify that surface coating of manufacturing equipment, metal molds, and tools are not covered except when these tools are sold or otherwise put into interstate commerce. The commenter requested the definition of facility maintenance state that the repair of metal molds is specifically cited as facility maintenance.

A second commenter stated that it is unclear if the rule as proposed applies to refurbishment activities and maintenance coating of existing metal parts, or if the rule as proposed is intended to apply only to ''new'' metal parts produced for sale. The commenter noted that some maintenance activities conducted at facilities include coating metal equipment and parts that are not part of the infrastructure of the affected facility, such as trucks or other transport vessels for raw materials or products.

One commenter requested clarification that coating activities at industrial sites to maintain the

structural and operational integrity of process equipment are not covered by the final rule. Many industries coat new and existing support structures, piping, and equipment as part of routine maintenance activities, but they do not produce and coat metal parts for commercial sale.

Two commenters requested that repainting of refillable gas cylinders for the delivery of industrial gases should be considered facility maintenance and not covered by the final rule. One commenter argued that the gas cylinders are transferred back and forth to the customer and that the principal activity of the facility is the delivery of gases and not the repainting of cylinders. Another commenter stated that the final rule should apply only to facilities for which surface coating is the ''principal activity,'' rather than merely discussing this applicability in the preamble.

Another commenter requested the facility maintenance exemption for surface coating on tools and equipment also apply to tools used occasionally off-site. Another commenter requested that EPA expand the definition of facility maintenance to include the fabrication and coating of equipment needed to support the function of the facility (*e.g.*, equipment required for supporting, holding, or reaching aircraft or aircraft parts and components).

Response: The EPA agrees that the surface coating of equipment and tools used by a manufacturing facility (compared to machinery and tools that are sold as industrial products) should be considered part of facility maintenance operations and not part of the miscellaneous metal parts and products surface coating source category. The final rule includes a definition of ''facility maintenance operations'' that includes the routine repair or renovation (including the surface coating) of the tools, equipment, machinery, and structures that comprise the infrastructure of the affected facility. Infrastructure may include buildings, tools, and equipment needed to support the function of the facility that are fixed in place, or are occasionally used off-site.

Since mold release agents are applied to molds and are not applied to the part being produced and do not become part of the part being produced, they would be considered part of facility maintenance and would not be subject to the final rule. However, EPA does not believe it is necessary to specifically include mold release agents in the definition of facility maintenance since they would already be covered as a surface coating applied to the tools and equipment of the affected facility.

The regular painting of gas cylinders is not considered facility maintenance because it is not incidental to the primary activity of a facility delivering specialty gases. The repainting of the cylinders is central to the reliable delivery of industrial gases to customers, even if the cylinders are owned by and returned to the gas vendor. The coating is not episodic or occasional, but is an ongoing operation at the source for which dedicated, fixed machinery and equipment are installed at the source. For these reasons, coating of the cylinders is considered part of the principal activity of the facility, which is providing gas to customers in sound and easily identifiable containers. Facility maintenance activities, including episodic or occasional surface coating, on the other hand, is ancillary or incidental to the principal activity of the facility.

The coating of mobile equipment and fleet trucks is considered part of facility maintenance for the Miscellaneous Metal Parts and Products NESHAP, as long as the coating of mobile equipment and fleet trucks is not one of the principal activities of the source. The routine maintenance of metal parts (such as rail car maintenance and drum refurbishment) is not exempt from the final rule when it is performed at sources for which their principal activity is the routine maintenance, including surface coating, of metal parts that are not new parts.

B. Need for Separate Source Category for Department of Defense Coatings

Comment: One commenter stated that EPA should establish a separate source category for DoD surface coating operations not covered by the Aerospace or the Shipbuilding and Ship Repair NESHAP (40 CFR part 63, subparts GG and II, respectively) and exempt these coating operations from the final rule for miscellaneous metal parts. The commenter described the unique material requirements and operating conditions for military coating operations that are different from commercial operations. The commenter claimed that the proposed compliance options would be impractical and extremely costly for DoD facilities because of the complexity of military coating operations, the number of coatings and solvents used, and the number of different items and substrates coated. Many DoD installations (especially those that service or remanufacture artillery, armored vehicles, weapons systems, and support equipment) use thousands of different coatings, and each material is subject to its own military specification.

Because DoD facilities use HAP-containing solvents, the commenter claimed they could not use the proposed compliant materials option. Reformulating solvents or coatings requires extensive field testing before they may be approved for use in tactical field equipment and weapons systems. In addition, updating the coatings for which there is a military specification requires updating the documentation applicable to military specifications and the documentation for the relevant equipment and weapons systems that adopt those military specifications.

The proposed emission rate option and the add-on controls option are not feasible because they would require DoD to be able to accurately track the amount of coating or cleaning solvent used on each item or substrate. As noted above, DoD installations may use thousands of different coatings on a variety of substrates, including metal, plastic, ceramics, rubber, fabric, wood, and composites.

The commenter requested a separate source category so that emission limits and a regulatory format could be developed that would be most appropriate for military coating needs. The commenter claimed that a separate rule also would ensure that all DoD coatings could comply with emission limits using the same units of measure. The commenter noted that DoD facilities use many of the same high performance coatings on plastic and metal items and substrates, and they could be potentially regulated by both the NESHAP for plastic parts and products and the NESHAP for miscellaneous metal parts and products.

Response: After several visits to DoD surface coating operations and meetings with DoD stakeholders, EPA agrees that a separate source category for DoD surface coating operations is warranted. One factor that we considered in this decision is the unique military specifications for coatings used on tactical and other military equipment. Further data collection and analysis are required to determine what emission limits are achievable for these coating operations. Another factor that we considered is the issue that military facilities may use thousands of different coatings, and that the types of equipment that are coated and the types of coatings used in a given time period are unpredictable and often influenced by world events. Further analysis is needed to determine what emission limit formats, compliance demonstration, and recordkeeping requirements are practical for this type of situation. Another consideration was

the high probability that these sources would be subject to multiple NESHAP.

The EPA will be developing separate NESHAP for ''Defense Land Systems and Miscellaneous Equipment'' surface coating operations. Those NESHAP will include operations that do not meet the applicability criteria of the Aerospace NESHAP or the Shipbuilding and Ship Repair NESHAP. The comments pertaining to the format of the standards and appropriate compliance options will be taken into consideration in the development of those NESHAP.

Since a separate source category will be established for DoD surface coating operations, the definition of high performance coating in the final rule has been written so that it does not include ''military combat, tactical, and munitions coating'' and the definition of ''military combat, tactical, and munitions coating'' is not included in the final rule.

C. Exclusion of Activities Subject to Other Surface Coating NESHAP

Comment: Several commenters requested that EPA clarify that the Aerospace NESHAP (40 CFR part 63, subpart GG), rather than the Miscellaneous Metal Parts NESHAP, cover parts necessary for the proper functioning of aircraft. The commenters were concerned in particular that the rule, as proposed, could be interpreted to apply to the specialty coatings included in appendix A to 40 CFR part 63, subpart GG. The commenters stated that the Aerospace NESHAP found that MACT controls were not warranted for certain aerospace surface coating operations and that regulating these operations under the Miscellaneous Metal Parts and Products NESHAP would be an unexplained change in policy.

Another commenter suggested that the final rule include an alternative compliance option for facilities subject to the final NESHAP under development for the surface coating of automobiles and light-duty trucks that also coat metal parts that would not be subject to the Automobiles and Light-Duty Trucks NESHAP. The commenter noted that some automobile and light-duty truck facilities will be subject to the final rule for metal parts coating, the NESHAP for the surface coating of automobiles and light-duty trucks, and the Plastic Parts and Products NESHAP. The commenter suggested that a source be allowed to comply with the final NESHAP for automobiles and light-duty trucks for all coating operations if the principle activity is the surface coating of automobiles and light-duty truck bodies. The commenter noted that the metal and plastic parts coating operations are often integrated with the body coating operations, since all three coating operations may share common coating supplies, application equipment, cleaning solvents, and emission controls. The shared equipment and materials could make tracking separate compliance for each NESHAP overly burdensome and would reduce the certainty of compliance.

One commenter requested that EPA clarify that shipbuilding or ship repair surface coating operations are subject to only the Shipbuilding and Ship Repair NESHAP (40 CFR part 63, subpart II). The commenter noted that the Shipbuilding and Ship Repair NESHAP covers only paints and thinners, and does not cover caulks, sealants, and adhesives. Since the metal parts rule covers all coating materials, the commenter was concerned that it would cover those materials that were not specifically addressed by the Shipbuilding and Ship Repair NESHAP and will make shipbuilding and ship repair sources subject to multiple NESHAP.

Response: We agree with the commenter that coating operations that are addressed in the Aerospace NESHAP, and for which EPA determined that MACT controls were not needed, are not intended to be regulated under the Miscellaneous Metal Parts and Products NESHAP. To clarify this intent, the final miscellaneous metal parts rule includes a provision that specifies that the final rule does not apply to coatings that meet the applicability criteria for the Aerospace NESHAP (40 CFR part 63, subpart GG). In addition, the final rule excludes the application of specialty coatings, as defined in appendix A to subpart GG, to metal parts of aerospace vehicles or components.

The coating of metal parts that would not meet the applicability of the Aerospace NESHAP or that would not require any of the specialty coatings defined in appendix A to 40 CFR part 63, subpart GG would be subject to the miscellaneous metal parts final rule. Information provided during the comment period indicates that any miscellaneous metal coating activities would comprise less than 5 percent of total coating activities at an aerospace facility. Consequently, the facility could elect to comply with the predominant activity compliance alternative to reduce its recordkeeping and reporting burden.

We agree that the final rule for the surface coating of miscellaneous metal parts is not intended to apply to coating operations that meet the applicability criteria of the Shipbuilding and Ship Repair NESHAP. Although the Shipbuilding and Ship Repair NESHAP did not establish emission limits for sealants, caulks, and adhesives used in shipbuilding or ship repair, such types of coatings used for shipbuilding or ship repair operations are more appropriately addressed under the Shipbuilding and Ship Repair NESHAP. The review of the Shipbuilding and Ship Repair NESHAP, required by section 112(d)(6)of the CAA, is an appropriate mechanism for evaluating whether emission limits are needed for sealants, caulks, and adhesives used in shipbuilding or ship repair.

For sources that will be subject to the final Automobiles and Light-Duty Trucks NESHAP, the final miscellaneous metal parts and products rule includes a provision to mitigate the overlap at these facilities. For these metal part surface coating operations, a facility has the option to comply with the requirements of the final Automobiles and Light-Duty Trucks NESHAP as long as the metal parts are for use in automobiles or light-duty trucks.

D. Complying With the Rule Representing the Majority of the Substrate (Plastic or Metal) on Pre-assembled Parts.

Comment: Several commenters supported this provision of the proposed rule while others did not. Several commenters noted that the source would be required to determine every month whether the majority of substrate on pre-assembled parts was metal or plastic based on the coatings applied during the previous 12-month period and argued this would be overly burdensome. Two commenters suggested that because the relative amount of metal and plastic coated could change over time, a facility could potentially fluctuate between applicable NESHAP. Two commenters also suggested that the final rule require facilities to establish whether the majority of surfaces coated are metal or plastic only at the time of their title V permit renewal, rather than on a 12-month rolling basis, to provide stability and reduce recordkeeping burden.

Other commenters claimed that the rule does not adequately address situations where separate plastic and metal parts are coated on the same line. As proposed, separate metal and plastic parts coated on the same line would need to comply separately with the plastic parts and the metal parts rules. The commenters noted that the same coatings and feed systems are often used for both plastic and metal parts on a

single line. The commenters recommended that the final rule adopt a ''predominant activity'' concept, whereby the facility could determine the predominant coating activity of a line and then comply with a single NESHAP.

Response: We recognize and appreciate some of the problems that were identified with this approach by the commenters. Although some commenters supported this approach, it is not included in the final rule. The final rule instead offers more practical compliance approaches, including a predominant activity alternative as suggested by some of the commenters.

The predominant activity alternative allows a facility to identify its predominant type of coating activity and comply with the NESHAP or the subcategory emission limit that applies to that activity for all coating operations. The predominant activity is defined as the activity that represents 90 percent or more of the surface coating that occurs at a facility.

We have analyzed the relative differences in emission limits that are included in the predominant activity compliance option, as it would apply to the NESHAP for plastic parts and products and the NESHAP for miscellaneous metal parts and products. We have determined, for certain subcategories, that the environmental impact of complying with the emission limit for the predominant activity is essentially equivalent to complying separately with each emission limit. For other subcategories, the environmental impact could be substantially different. To prevent situations that could lead to substantial emissions increases, the following activities cannot be used as the predominant activity at a facility: high performance, rubber-to-metal, and extreme performance fluoropolymer coatings. Emission limits for these coating operations reflect the need for specialized performance requirements that can currently be accomplished only with materials that contain substantially higher-HAP than materials used at other types of coating operations. It would be inappropriate to allow coating operations that can be performed with lower-HAP materials to comply with substantially higher-HAP emission limits than would otherwise be applicable.

Under the predominant activity alternative, if all coating operations subject to NESHAP comply with the emission limit applicable to the predominant activity, the facility will be considered in compliance with the emission limits otherwise applicable to the minority surface coating operations (*i.e,* those that amount to less than 10 percent of the coating activity).

Another compliance option to eliminate the need to comply with more than one coating NESHAP has also been added to the final rule. This second option allows a facility to calculate and comply with a facility-specific emission limit.

E. Comply With the Most Stringent NESHAP

Comment: Several commenters supported this provision. One commenter agreed that complying with only one NESHAP would prevent excessive monitoring, recordkeeping, and reporting. One commenter suggested that this option would require less recordkeeping than tracking and determining which substrate represents the greatest coating activity.

However, several commenters stated that different units of measure (*e.g.*, lb organic HAP per lb solids versus lb organic HAP per gal solids) make it difficult to determine which surface coating NESHAP among several is more stringent. Additionally, one commenter noted that case-by-case demonstrations of relative stringency based on total estimated annual emissions are difficult because of the different standards and units of measure in the various NESHAP. One commenter noted that when different NESHAP have different methods of compliance demonstration, sources must track and allocate material usage differently for different parts. Cleaning solvents in particular are a problem, since some NESHAP emission limits include cleaning solvents while others impose work practices instead.

One commenter noted that the rule as proposed places the burden on the source to determine the most stringent limit, and that the different units used for different surface coating rules may cause a source to mistakenly fall out of compliance through miscalculation or misunderstanding.

Several commenters suggested options so that sources would not have to determine which rule is most stringent on a case-by-case basis. Some commenters suggested that the relative stringency of different NESHAP should be stated in each rulemaking so that facilities subject to more than one NESHAP do not need to perform a case-by-case determination of which applicable rule is most stringent. Another commenter suggested that the different surface coating rules contain factors or equations so a source could convert emission limits from one unit to another (*e.g.*, lb organic HAP/lb solids to lb organic HAP/gal solids).

One commenter recommended that EPA allow facilities subject to both the Plastic Parts and Products NESHAP and the Miscellaneous Metal Parts and Products NESHAP the option of complying with the standards of their choice since both NESHAP will significantly reduce organic HAP emissions.

Response: Through clarification of the applicability provisions of the final rule, as described in this preamble, we have significantly reduced the potential for sources to be subject to multiple surface coating NESHAP. In addition, EPA is providing in the final rule, the opportunity for a source to determine and comply with a facility-specific weighted emission limit for all coating operations that take place at the source. The emission limit would be weighted according to the relative amount of coatings used that would be subject to separate emission limits. This alternative emission limit may include applicable emission limits from two or more NESHAP.

In calculating the facility-specific emission limit, the basis for the weighting of the individual emission limits must be the volume of coating solids used in each subcategory. The volume coating solids used in the different coating operations may be calculated by a variety of methods, as long as it is accepted by the permitting authority. For example, in some cases a facility that uses the same coating for plastic and metal parts may be able to use the design specifications of the parts coated and the numbers of each type of part coated to calculate the volume of coating solids used for metal and plastic surfaces subject to the individual emission limits. In other situations, actual records of coating usage for each operation may be needed to provide a valid calculation.

In calculating a facility-specific emission limit for operations subject to NESHAP with emission limits in different formats, you will need to convert emission limits to the same format. To do so, you must use a default value for solids density of 10.5 lbs solids per gal solids (1.26 kg solids/liter solids) to convert emission limits in the Plastic Parts and Products NESHAP that are in ''HAP per mass solids'' to the ''HAP per volume solids'' units of the Miscellaneous Metal Parts and Products NESHAP. This default value was calculated from the weighted-average solids density of coatings in the plastic parts survey database and represents the average solids density of plastic parts coatings.

The following example illustrates how the facility-specific emission limit

may be used. Assume a facility has three coating operations subject to the following emission limits:

- Plastic parts general use (0.16 lb organic HAP/lb solids);
- Miscellaneous metal parts extreme performance flouropolymer coatings (12.4 lb organic HAP/gal solids); and
- Miscellaneous metal parts general use (2.6 lb organic HAP/gal solids).

The three coating operations used the following volumes of coating solids in the 12 months of the compliance period:

- Plastic parts general use: 40,000 gal solids;
- Miscellaneous metal parts extreme performance flouropolymer coatings: 2,000 gal solids; and
- Miscellaneous metal parts general use: 58,000 gal solids.

First, the plastic parts general use emission limit must be converted to lb organic HAP/gal solids units using the default solids density of 10.5 lb solids per gal solids:

$$\frac{0.16 \text{ lb HAP}}{\text{lb solids}} \times \frac{10.5 \text{ lb solids}}{\text{gal solids}} = \frac{1.7 \text{ lb HAP}}{\text{gal solids}}$$

Next, the facility-specific emission limit is calculated using Equation 1 in § 63.3890 of the final rule:

$$\frac{(1.7)\ (40{,}000) + (12.4)\ (2{,}000) + (2.6)\ (58{,}000)}{(40{,}000 + 2{,}000 + 58{,}000)} = \frac{2.4 \text{ lb HAP}}{\text{lb solids}}$$

If all coating operations comply with an emission limit of 2.4 lb organic HAP/gal solids and with the other compliance provisions of the final rule, the facility will be in compliance with the final rule for that compliance period. The calculation must be repeated for each 12-month compliance period. In this example, compliance will also constitute compliance with the Plastic Parts and Products NESHAP for the plastic parts coating operations. The facility may use either the compliant materials option, the emission rate without add-on controls option, or the emission rate with add-on controls option to demonstrate compliance with the facility-specific emission limit.

This approach is consistent with the CAA because the emission limits from which the facility-specific emission limit would be calculated are based on the MACT emission limits for each applicable coating operation. We believe that overall emissions would be essentially the same as if each coating operation were complying separately with each applicable emission limit. The facility-specific emission limit needs to be calculated each month of the 12 month compliance period because of the wide differences in the various emission limits available for inclusion. A relatively small change in the mix of coating operations conducted during a compliance period may have a significant effect on the weighted emission limit. Thus, it would not be appropriate for a facility to establish and maintain a fixed facility-specific emission limit based on historical data or long term projections.

In the final rule, the facility-specific emission limit and predominant activity alternatives provide sources with comprehensive and flexible approaches that will reduce the recordkeeping associated with sources that coat multiple substrates and whose workload could fluctuate over time. These alternatives reduce the likelihood of overlap among multiple surface coating NESHAP.

F. Assembled On-Road Vehicle Coating

Comment: Two commenters recommended that the predominant substrate type on motor homes and other recreational vehicles (RV) be established as the most restrictive substrate type (*i.e.*, plastics). They argued that a single emission limit should be established for coating motor homes and other assembled on-road vehicles (AORV) that reflects the restrictions of the plastic substrate used on the bodies of motor homes and other RV. The commenters argued that the recordkeeping to document the fraction of plastic and metal on RV would be a major challenge because of the different options for each RV that can be chosen by the customer which affect the ratio of metal-to-plastic that is coated on each vehicle.

One commenter requested that the metal parts rule specifically exclude aftermarket repairs and refinishing of heavy duty trucks, buses, and other vehicles. Other commenters requested that the final rule exempt auto refinishing operations and requested that the final rule state that the refinishing of assembled vehicles is covered under the AORV coating subcategory in the Plastic Parts and Products NESHAP. One commenter also requested that the AORV subcategory in the plastic parts rule, and not the miscellaneous metal parts rule, apply to vehicle parts that are separate from the assembled vehicle at the time of coating application, if the part is eventually to be incorporated into the vehicle. The commenter reasoned that emissions from such operations are negligible in comparison to overall refinish coating emissions, and tremendous costs would be involved with having to reformulate all the colors required to color match under two different regulatory limits and units of measure.

Response: We agree that a single emission limit should apply to all surface coating operations on motor homes and other fully assembled vehicles. Even though fully assembled vehicles may contain a mix of plastic and metal substrates, the majority of the surface coatings applied to the vehicle are automotive-type refinish coatings. In the proposed rule for plastic parts and product surface coating (40 CFR part 63, subpart PPPP; 67 FR 72276, December 4, 2002), we proposed an emission limit for an AORV surface coating subcategory, and an emission limit for that subcategory has been included in the final plastic parts rule.

The AORV subcategory in the final plastic parts rule includes all surface coating operations (regardless of the relative amount of metal and plastic) on fully assembled vehicles, including, for example, motor homes and other RV, refinishing of cars and trucks following body repair, and the painting of fleet trucks. Surface coating operations that

are subject to the AORV surface coating emission limit in the plastic parts rule are not subject to any of the emission limits in the miscellaneous metal parts and products rule. These include incidental coating of parts that have been removed from the vehicle, such as grille fronts, to facilitate access and coverage.

G. The MACT Floor Approach and Database

Comment: Several commenters supported the approach of using State volatile organic compounds (VOC) rules to develop the MACT floor. Some found the VOC rules to be a good indicator of HAP emissions and to represent emission levels that have been shown to be achievable for the range of sources in the category and supported the assumptions made by EPA in that approach. However, one commenter contended that EPA improperly used State VOC emission limits instead of levels ''actually achieved'' by the best performing 12 percent of sources to set the MACT floor. The commenter argued that one legal precedent (*Sierra Club* v. *U.S. EPA*, 167 F.3d 658, 664 D.C. Cir. 1999) has found that the use of regulatory permit data in place of actual performance data is only permissible for setting a MACT floor when a rational relationship exists between permitted emissions and actual emissions. The commenter argued that a significant difference existed between the allowable VOC emissions under State rules and actual HAP emissions of the best performing facilities because EPA improperly assumed that all facilities operated at the allowable VOC level in the State rules. That is, EPA assumed that VOC emissions were no lower than the State VOC limits.

In place of using State VOC rules, the commenter argued that EPA should use the average emission rate of 0.1 lb organic HAP/gal coating solids that was the result of a preliminary ranking presented in the preamble to the proposed rule (67 FR 52791, August 13, 2002). The commenter further argued that unless EPA sees a need to establish additional subcategories, this limit should apply to all sources in the general use coating category.

The commenter noted that the HAP limits for the general use category are higher than the actual emissions of ''a large portion'' of the existing sources that will be regulated by the final rule. From this observation, the commenter concluded that the final rule will allow several hundred sources to increase HAP emissions.

The commenter also contended that data from the miscellaneous metal parts and products industry indicated that coating formulations with less HAP do not result in less VOC, and it is incorrect to assume that VOC control is a proxy for HAP control. The commenter concluded from this observation that using State VOC rules to develop the MACT floor for HAP emissions was inconsistent with the CAA because no rational relationship existed between permitted VOC emissions and actual HAP emissions.

Response: For most of the sources in this source category, the State VOC rules constituted the only applicable and measurable emission limitation that could be used in a MACT floor ranking for some subcategories. We did not adopt the emission level indicated by the preliminary MACT ranking because that level was not achievable for the extremely diverse facilities in the relevant subcategories, as represented by the miscellaneous metal parts and products database. Along with various stakeholder groups, we also considered MACT rankings for individual industry segments, but the results for individual segments would not be achievable for all sources within those segments because of diversity even within those segments. The only exceptions were for the rubber-to-metal subcategory and the magnet-wire subcategory, where the MACT emission limits are based on the MACT database rankings for these segments. Therefore, we chose the final approach of basing HAP limits on State VOC limits for the general use and high performance categories. State VOC limits have been demonstrated to be achievable emission limitations for the range of sources included within these two miscellaneous metal parts and products subcategories.

We started our development of HAP limits with the State VOC limits and then applied the appropriate HAP/VOC ratio to determine a good representation of the HAP content of coatings that meet the VOC limits. If we had just used the VOC limits as HAP limits without adjusting for the HAP/VOC ratio, then the assertion in the comment would be more accurate.

Although we agree that some sources achieved nominally lower-HAP emission limitations than those derived from the State VOC limits, it is not clear that those lower-emitting facilities represent the range of sources in the source category or in any distinct or clearly definable subcategory or industry segment.

Contrary to the commenter's assertion, VOC limits do limit HAP emissions indirectly from this source category because nearly all organic HAP used in coatings and related solvents are also VOC. Although many VOC are not HAP, limiting VOC also limits HAP because the HAP content cannot exceed the VOC limit. Therefore, those sources subject to VOC limits have also reduced HAP emissions to comply with the VOC emission limits.

We have established for this source category that a reasonable relationship exists between State VOC rule limits and actual VOC emissions for most facilities. Using the miscellaneous metal parts and products survey data, we calculated the average VOC content (in lb VOC per gal of coating, less water) for each facility subject to a State VOC rule limit. The average VOC content of the coatings reported for each facility subject to a State VOC limit is nominally lower than the applicable State VOC limit, consistent with allowing a reasonable margin for compliance.

Comment: One commenter supported the HAP-to-VOC ratio that was used to convert the VOC limits in State coating rules to HAP limits. However, another commenter argued against using the average HAP-to-VOC ratio for all sources in setting the MACT floor, stating that among the best performing sources, the HAP-to-VOC ratio is much less than the 43-percent overall average ratio used by EPA. The commenter did not provide specific HAP-to-VOC ratios for any of the lower emitting facilities. The commenter argued that if EPA decides to base the rule on State VOC limits, EPA should replace the 43-percent HAP-to-VOC ratio with the average HAP-to-VOC ratio for the best performing 12 percent of sources.

Another commenter noted that the EPA database did not include or account for HAP contained in solvent blends. The commenter claimed that the default fractions for these products could ''significantly impact the baseline'' and requested that the VOC-to-HAP conversion factor be reviewed.

Response: As suggested by one commenter, we assessed the HAP-to-VOC ratio of those facilities that represented the MACT floor. And as suggested by other commenters, we reviewed the solvent blends that were used by a representative sample of sources and adjusted the emission limits is proposed to account for the organic HAP in solvent blends. The sources included in the MACT floor 12-percent determination are the facilities in the metal parts database that are subject to the most stringent State VOC coating rules.

Contrary to the one commenter's contention, we found that the HAP-to-VOC ratio for sources subject to the most stringent State VOC rules was

neither lower than nor substantially different from the 0.43 ratio used to develop the proposed emission limits. We estimated that the organic HAP from solvent blends accounts for about 2 percent of all HAP. Therefore, the HAP-to-VOC ratio used for calculating the general use limits has been increased from 0.43 to 0.44 to account for the organic HAP in solvent blends, and the general use limits were recalculated and then rounded to two significant figures. The revised existing source limit is 2.6 lb organic HAP/gal (0.31 kg organic HAP/liter) coating solids used. The revised new source limit is 1.9 lb organic HAP/gal (0.23 kg organic HAP/liter). Some of the emission limits changed slightly due to rounding the proposed emission limits to two or three significant figures.

Since the high performance, magnet wire, and rubber-to-metal coating emission limits were not developed using the HAP-to-VOC ratio of 0.43, the emission limits for these coating operations were not recalculated. For the high performance limit, a ratio of 0.70 provided by industry was used. For magnet wire and rubber-to-metal, HAP content from the survey database were used to establish the floor, so no HAP-to-VOC ratio was needed for these subcategories.

Comment: Several commenters stated that the HAP from cleaning materials should not be included in the MACT floor or in calculating emission limits for general use coatings. The commenters argued that the State VOC rules on which these limits are based do not include cleaning solvents. Two commenters pointed out that State VOC rules follow the recommendations of EPA's control technique guideline document for miscellaneous metal parts and products surface coating, which recommends excluding cleaning solvents. By including the cleaning solvents in the miscellaneous metal parts and products MACT floor, the commenters claimed that EPA made the proposed limits more stringent than allowed by the MACT analysis based on State VOC rules. Two commenters suggested that if a cleaning solvent limit were necessary, it should be listed separately or averaged separately and then added directly to the proposed HAP limits.

Several commenters suggested changes to the rule as proposed if cleaning solvent emissions were to be regulated. Three commenters stated that cleaning solvents should be exempt from the final emission limits provided cleaning operations are conducted in closed containers. Two commenters suggested that the final rule should include work practices for cleaning solvents. One commenter noted that the Industrial Cleaning Solvent Alternative Control Technique document suggested solvent accounting and plant management practices to address emissions from solvent cleaning. The same commenter also noted that EPA has used its authority under section 112(h) of the CAA to incorporate work practices for cleaning solvents for the Wood Furniture, Aerospace, and Shipbuilding and Ship Repair NESHAP. One commenter suggested cleaning solvents be regulated separately from coatings based on HAP composition or vapor pressure.

Response: The EPA reviewed the cleaning material reported in the database for the miscellaneous metal parts rule and concluded that no-HAP cleaners are a viable option for sources subject to the final rule. The proposed and final emission limits reflect the fact that miscellaneous metal parts and products sources, for which EPA had data, were using cleaning solvents that contained no organic HAP or were using solvent blends containing only small percentages of organic HAP (*i.e.,* 6 percent HAP or less), which would have little, if any, effect on their emission rate. As described earlier, we have adjusted the HAP-to-VOC ratio used to establish the emission limits to account for the organic HAP contained in solvent blends.

The final rule accounts for cleaning operations that are conducted in closed containers, although there is no specific requirement to perform cleaning in closed containers. In the compliance calculations used in the emission rate without add-on controls option and the emission rate with add-on controls option, you only need to include the organic HAP contained in materials that are consumed during the previous 12-month period and you may take credit for organic HAP contained in materials that are sent off-site for recycling or disposal. If cleaning is performed in closed containers, the amount that evaporates to the atmosphere is minimized.

H. Compliance Options for Meeting the Emission Limits

Comment: Many commenters requested clarification on how the different compliance options could be applied to different coating lines at the same facility. Several commenters asked EPA to verify that a facility can choose different control options for different lines at a single facility.

Response: You may choose different compliance options for different lines at the same facility. For example, one line may be able to use the compliant materials option, while another line may need the flexibility to use higher- and lower-HAP materials under one of the emission rate compliance options. You may also use different compliance options within a single line, as long as different compliance options are not applied at the same time to the same coating applied to a single part. For example, most of the coatings used on a particular line may be able to individually meet the emission limit for a particular subcategory, but a few coatings may need a higher-HAP content. You could average these higher-HAP coatings with some of the lower-HAP materials under the emission rate without add-on controls option and demonstrate compliance for these separately, while the other lower-HAP coatings comply under the compliant materials option.

It may be more practical to use an add-on control for some coating operations, such as a specific line, than for others. If you have an add-on control device on some coating operations, the work practice standards apply to only the coatings and operations controlled by the add-on controls.

Comment: One commenter requested that EPA clarify how to switch between compliance options, specifically when switching between the compliant materials option and one of the two options that require calculating a 12-month rolling average emission rate. The commenter suggested that the final rule should allow maximum flexibility in switching between options as long as all compliance periods demonstrate compliance under at least one option, and the necessary data are available for calculating the needed 12-month averages.

Response: You may switch between compliance options at any time as long as you notify your permitting authority in your next semiannual compliance report, and you comply with all monitoring, recordkeeping, and reporting needed for the compliance option to which you are switching. Keep in mind, however, that if you switch from one compliance option to another, you must be able to demonstrate compliance based on the previous 12 months of data. As a result, you may need data from the previous 12 months of operation that were not specifically required by the option under which you were previously demonstrating compliance. This could be especially true if you switched from the compliant materials option to the emission rate without add-on controls option or the emission rate with add-on controls option.

If you began using an add-on control device and complying with the emission rate with add-on controls option, you may apply the emission reduction credit to only those coatings that were applied after you began using the add-on control device. You would also need to demonstrate compliance with the operating limits for the add-on control device only after you began using it. Conversely, if you stopped using an add-on control device and began complying with the emission rate without add-on controls option, you could no longer apply the emission reduction credit to coatings applied after the add-on control was shut down, but you would also no longer need to demonstrate compliance with the operating limits. In both cases, your 12-month compliance calculations would include a period when the control device was in use and a period when it was not. As you moved through time and performed subsequent monthly compliance calculations, the fraction of coating activity under the previous compliance option would decrease and the fraction under the current compliance option would increase.

Comment: One commenter requested that the HAP content of thinners and solvents not be restricted to absolute zero for the compliant materials option because thinners and solvents can pick up trace amounts of HAP during the recycling process.

Response: In the final rule, we have clarified that under the compliant materials compliance option, thinners and cleaning solvents do not need to be absolutely zero-HAP. We have included a definition of non-HAP materials based on common reporting thresholds that are already in use. Thinners and other additives, cleaning solvents, and coatings are considered non-HAP as long as the organic HAP level does not exceed the OSHA reporting thresholds for HAP (0.1 percent by weight for OSHA-defined carcinogens and 1.0 percent by weight for other HAP). In addition, we have included a provision that you do not need to redetermine the organic HAP content of solvents that are recycled off-site, if you have documentation showing that you received back the exact same solvent you originally sent off-site for recycling. This documentation ensures that the solvent you receive back does not represent a potential net increase in the organic HAP being brought to the site. The final rule contains a provision that you do not need to redetermine the organic HAP content of solvent recycled on site.

Comment: One commenter suggested that HAP emissions from storage, mixing, conveying, and waste management of coatings, thinners, cleaning materials, and associated wastes should be explicitly excluded in the emission calculations in the rule. The commenter noted that it is difficult to directly quantify these emissions and that there is often a lack of general agreement on how to quantify such losses. The commenter also noted that EPA stated in the preamble to the proposed rule that we were not able to obtain data to adequately quantify HAP emissions from storage, mixing, and waste handling (67 FR 52790).

Response: Under the compliant material option you must demonstrate that the organic HAP content of each coating used in the coating operation(s) is less than or equal to the applicable emission limit in § 63.3890, and that each thinner, additive, and cleaning material used contains no organic HAP. The compliant material option focuses on the organic HAP content of coatings, thinners, additives, and cleaning materials as received from the manufacturer or supplier and prior to any alteration. No separate or direct accounting of emissions from storage, mixing, and conveying of coatings, thinners, additives, cleaning materials and associated wastes is required under the compliant material option. Such an accounting clearly is not needed when each coating is a compliant coating and each thinner, additive, and cleaning material contains no organic HAP.

Under the emission rate without add-on controls option and the emission rate with add-on controls option all of the organic HAP content of coatings, thinners, additives, and cleaning materials is initially assumed to be emitted. (See calculation of the terms A, B, and C in § 63.3951(e).) Any emissions from storage, mixing, and conveying of coatings, thinners, additives, cleaning materials, and associated wastes are implicitly included in this assumption. The rule does include provisions which allow for reclaimed materials to be excluded from material usage. (See introductory language to § 63.3951.) The rule also includes provisions for the organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal to be excluded from the total mass of organic HAP emissions. No separate or direct accounting of emissions from storage, mixing, and conveying of coatings, thinners, additives, cleaning materials, and associated wastes is required under either the emission rate without add-on controls option or the emission rate with add-on controls option. Such an accounting clearly is not needed when all of the organic HAP content of coatings, thinners, additives, and cleaning materials is initially assumed to be emitted and provisions are made to exclude reclaimed materials from material usage and to exclude organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal to be excluded from the total mass of organic HAP emissions.

We agree that no separate or direct accounting of emissions from storage, mixing, and conveying of coatings, thinners, additives, cleaning materials, and associated wastes is required under this rule. We believe that this is sufficiently clear in the final rule. We have not made any changes in the final rule in regard to this comment.

I. Methods for Expressing Organic HAP Content of Coatings

Comment: Several commenters stated that the emission limits should be in units of pounds of HAP per gal of coating (lbs HAP/gal coating), rather than lbs HAP/gal solids to be consistent with existing permits and State coating rules. One commenter noted that changing the units from lb/gal coating to lb/gal solids would not allow the facility to continue to track performance improvements from VOC emission reduction initiatives. One commenter, a representative of the recreational vehicle industry, stated that using lb organic HAP/gal solids would be consistent with other coating rules that affect the recreational vehicle industry.

Response: The emission limits in many State VOC rules for miscellaneous metal parts coating are expressed in units of mass of VOC per volume of coating less water and less exempt compounds. Similar units were used for the emission limit recommendations in the 1978 guidance document for this source category titled Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products (EPA–450/2–78–015). These ''less water'' units are difficult to work with and are impractical for facilities with add-on control equipment. As a result of 1987 EPA guidance (52 FR 45108, November 24, 1987), some States have changed their VOC limits to mass of VOC per volume of solids, and most States have added alternative limits in units of mass of VOC per volume of solids for facilities with add-on control equipment.

The use of ''less water'' units for HAP in the final rule would lead to even more difficulties and probable confusion. In order to provide a meaningful basis for comparison of the HAP content of different coatings, the

units would need to be mass of HAP per volume of coating less water and less non-HAP organic volatiles. Most coatings contain non-HAP organic volatiles. In order to express the HAP content of such coatings in these units, the weight fraction and density of each non-HAP organic volatile would be needed. This could be a significant additional data gathering burden. In addition, these units would be unworkable for facilities with add-on control equipment.

Comment: Additional commenters objected to expressing the emission limits in lb organic HAP/gal solids, claiming that this unit of measure is hard to understand and verify for several reasons: Estimating gal of solids is based on theoretical calculations; manufacturers do not routinely measure gal solids; and the two ASTM methods specified for measuring volume solids, ASTM Methods D2697–86 (Reapproved 1998) and D6093–97, are inaccurate and costly to run. The commenter also specifically claimed that the emission limits were based on an arbitrarily chosen default density for coating solids. The commenters recommended using lb organic HAP/lb coating solids because this metric is readily available from the manufacturers, is based on a reliable method, and is more universally used by the surface coating industry.

Response: Many Federal and State VOC rules use units of mass of VOC per volume of solids. In over 20 years of use, there have been no significant difficulties identified or reported in the use or understanding of these units. The volume solids content of coatings is routinely used by both coating manufacturers and coating users as a measure of coverage. The survey data that EPA collected on miscellaneous metal parts and products coatings indicate that volume solids data are commonly available.

The test methods for volume solids are one option for generating volume solids content data. Formulation data for volume solids may also be used. The final rule states that the test method results will take precedence unless, after consultation, you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

The emissions limits were, in part, determined by using a standard VOC density to convert State emission limits from units of mass of VOC per volume of coating less water and less exempt compounds to mass of VOC per volume of solids. The VOC density used for this conversion was 7.36 lbs per gal. This VOC density was used in EPA's 1978 guidance for this source category and is commonly used for converting emissions limits for this source category from a ''less water'' to a volume solids basis. This document is ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products,'' EPA–450/2–78–015. The density of coating solids is not needed and was not used to make this conversion.

Comment: One commenter requested that the final rule clarify how powder coatings can be used in calculations to show compliance with the emission rate option. The commenter noted that the compliance units and equations are based on volume, which is not applicable for non-liquid coatings, which are purchased by weight. The commenter suggested that the rule include a method for determining the density of powder coatings so the gal of solids for powder coatings can be determined.

Response: In the final rule, you may include the solids from powder coatings in the denominator for the emission rate calculations in the emission rate without add-on controls and the emission rate with add-on controls compliance options. By allowing facilities to include powder coatings in the compliance demonstrations, we hope to encourage greater use of this lower-emitting technology. The final rule includes ASTM Method D5965–02, ''Standard Test Method for Specific Gravity of Coating Powders,'' to measure the density of powder coatings. The density (or applied coating solids density) is density of the powder coating after application and curing. The bulk density (or apparent density) of the powder coating prior to application cannot be used in the compliance calculations because the bulk density will include air spaces in the powder that are not present in the cured coating.

Comments: One commenter stated that the final rule should allow sources or materials suppliers to use alternatives to EPA Method 24 to determine the amount of HAP that is actually emitted from reactive adhesives as they are used. The proposed rule and associated test methods assumed that all HAP contained in coatings or additives are emitted. However, in reactive adhesives, some of the HAP species react with other ingredients to form solids and are not emitted to the atmosphere. Therefore, the amount of HAP emitted can be significantly less than the amount of HAP present in the liquid adhesive.

Response: An alternative method for determining the fraction of HAP emitted from reactive adhesives has been included in appendix A to subpart PPPP 40 CFR part 63. Sources using reactive adhesives may use this method for demonstrating compliance based on the organic HAP actually emitted, rather than using Method 311, Method 24, or composition data. The method relies on preparing a sample (of known weight) of the adhesive as it will be applied, allowing it to fully cure, baking the sample, and then weighing the cured adhesive to determine the weight loss. The weight loss represents the volatile fraction that is emitted from the adhesive.

J. High Performance Coatings

Several commenters suggested that EPA expand the definition of high performance coating to include several types of specialized coatings: Paints for offshore oil platform structures, extreme performance oilfield coatings, and coatings exposed to food grade products in rail tank cars and in drums.

Two commenters requested that EPA expand the definition of high performance coating to include paints used for off shore oil platforms since general use coatings cannot withstand saltwater. The commenters noted that in Louisiana, the coatings used for large off shore structures are subject to the same State limits as those for the shipbuilding and ship repair industry and are not subject to the general use limits in the State miscellaneous metal parts and products rule. The commenters also noted that the definition of coating in the State rule and the Shipbuilding and Ship Repair NESHAP includes just paints and thinners, but the definition in the Miscellaneous Metal Parts and Products NESHAP includes adhesives, caulks, and cleaning solvents.

One commenter requested that extreme performance oilfield coatings should be included in the definition of high performance coating. According to the commenter, internal oilfield pipe coatings must withstand elevated temperature (as high as 400 degrees Fahrenheit), extreme pressure, corrosive materials, and abrasive service and these criteria are generally considered in defining the extreme performance category used in California VOC rules. According to the commenter, approximately 15 plants perform oilfield equipment coating.

Another commenter suggested that high performance coatings should include ''extreme performance coatings'' as defined by South Coast Air Quality Management District Rule 1107 with the addition of coatings exposed to food grade commodities. The commenter argued that this revision is needed for coatings used on rail tank car interiors

and exteriors to protect them from harsh chemicals or food grade products such as wine and noted that coatings used in tank cars carrying food must meet FDA requirements. The commenter explained that tank car exteriors are exposed to spillage, fumes, salt air, snow, and temperature extremes.

One commenter added that EPA should expand the high performance coatings category to include the coatings applied to the interior of drums and pails to protect substrates from hazardous materials and safeguard food-grade products and prevent leakage. The commenter asked that EPA acknowledge that interior coatings for steel and other metal drums and pails are universally accepted as high performance coatings.

Response: We analyzed the metal parts survey data that represented the types of coating operations that the commenters argued should be included in the high performance coating category. In all cases, we found that the general use emission limit is achievable for these types of coating operations. The commenters submitted no coating HAP content data to support the need for including these coating types in the definition of high performance coatings.

The metal parts database includes data for facilities that coat off shore oil platforms and internal oilfield pipes. These data indicate that these facilities could comply with the general use emission limit. Therefore, based on the information available to the Administrator, the final rule does not include oil platform and internal oilfield pipe coatings in the definition of high performance coatings.

The metal parts database includes data from 21 sources performing coating operations on rail cars. These data indicate that the general use emission limit is achievable for these types of sources. Therefore, we did not write the final rule to include rail tank car interior or exterior coatings in the definition of high performance coatings.

The metal parts database includes data from 17 sources performing drum coating operations. These data indicate that the general use emission limit is achievable for these types of sources. Therefore, we did not write the final rule to include coatings applied to pails and drums in the definition of high performance coatings.

Comment: One commenter suggested that extreme performance fluoropolymer (EPFP) coatings should be exempt from the final rule or subject to the limit for high performance coatings. According to the commenter, these coatings are used when one or more of several performance criteria are required including creating a non-stick surface, providing solid film lubrication, providing chemical resistance, providing resistance to a wide range of temperatures, complying with certain FDA specifications, and others. The commenter claimed that water-borne EPFP coatings, for many applications, do not achieve satisfactory abrasion resistance, adhesion, thinness, and other performance criteria.

The commenter offered a definition of EPFP coatings, data on the HAP content of ten different EPFP coatings, and an estimate of national HAP emissions from EPFP coatings. According to the commenter, total estimated EPFP coating use is about 60,000 gal nationally with HAP emissions of about 45 tpy. The HAP content of the ten EPFP coatings submitted by the commenter ranged from 1.1 lb organic HAP/gal solids to 12.4 lb organic HAP/gal solids. The commenter did not provide any data on representative emission rates from EPFP coating operations. Data on HAP content for only a few of these coatings were included in the metal parts database, but these data were consistent with the data provided by the commenter.

Response: Based on the HAP content data and performance requirements fulfilled by EPFP coatings, we agree that EPFP coatings should not be subject to the general use emission limit. Therefore, the final rule includes a subcategory for EPFP coatings subject to an emission limit for new and existing sources of 1.5 kg organic HAP/liter coating solids (12.4 lb organic HAP/gal coating solids) used based on the data received with the public comments. This limit is more stringent than the high performance limit because the data provided by the commenter indicate that these coatings can meet a more stringent limit. Since sufficient data were available to establish a HAP content limit for these coatings, an exemption for these coatings is not needed in the final miscellaneous metal parts rule.

Comment: One commenter requested that the final rule exempt the coating of NASA launch support equipment or include the coating of this equipment in the surface coating NESHAP being developed for defense land systems and miscellaneous equipment. The commenter explained that these coatings have unique performance requirements, such as the ability to withstand the exhaust from rocket engines, and the coatings that meet these requirements must be qualified for use under NASA specifications.

Response: We agree that the coatings used on NASA launch support equipment have unique performance requirements. These performance requirements and the coatings needed to meet them will require further analysis before emission limits can be established. Since the process for qualifying coatings under NASA specifications is similar to the process of qualifying coatings for use under military specifications, these coating operations will be included in the development of the surface coating NESHAP being developed for defense land systems and miscellaneous equipment.

K. Compliance Requirements for Sources With Add-on Controls

Comment: Several commenters stated that the compliance calculations in § 63.3961(h) as proposed should not use an assumption of zero-efficiency when deviations occur. According to one commenter, any quantitative data on emissions should be allowed to be considered if agreed to by the enforcing agency. Other commenters stated that a source should be allowed to demonstrate through monitoring of other parameters, compliance with standard procedures, or other means (such as fuel consumption or manual temperature recordings) that some or all of the emissions were controlled. One commenter requested that EPA allow a facility to estimate capture or destruction efficiency during deviations, based on design data or test data. One commenter stated that facilities should be able to test over a range of operating conditions, so that the source can estimate control efficiency during the deviation rather than having to assume zero-percent efficiency in the compliance calculations.

Response: If a source has manually collected parameter data indicating that an emission capture system or control device was operating normally during a parameter monitoring system malfunction, these data could be used to support and document a different control efficiency, and the source would not have to assume zero-percent efficiency.

If a source has data indicating the actual performance of an add-on emission capture system and control device (*e.g.*, data from previous tests measuring percent capture at reduced flow rates or percent destruction efficiency at reduced thermal oxidizer temperatures) during a deviation from operating limits, then the source may use the actual performance in determining compliance, if the use of the data is approved by the Administrator. The final rule does not allow a source to otherwise estimate the efficiency of a capture system or control

device during a deviation because this would provide no assurance of the quality of the data used in the compliance calculation.

L. Compliance Requirements for Magnet Wire Sources

Comment: Several commenters from the magnet wire industry argued that the testing and monitoring provisions for sources with add-on controls were not applicable to magnet wire coating machines. The commenters noted that magnet wire coating machines require an oven to cure the coating that is applied to the wire as it passes through the machine. The heat used to maintain the temperature of the oven is provided by the combustion of the solvents that are evaporated from the coating. Although a supplemental burner or heater is used to heat the oven at startup, once the oven is running, the temperature is maintained only by combustion of the solvent vapors. Combustion is maintained in modern ovens by a bed of catalyst that is located in the recirculating gas stream within the oven. In some older ovens, a burner tube is used in place of the catalyst bed to maintain temperature, although the solvent vapors are still the primary source of fuel for the oven. Air is re-circulated from an evaporative zone in the oven, through the catalyst bed or burner tube, and back to the evaporative zone. A fraction of the air is vented to the atmosphere after combustion and replaced with air drawn in through the openings in the oven to maintain oxygen levels inside the oven.

According to the commenters, magnet wire ovens are different from other surface coating sources in several ways. First, the coating is applied by an automated machine that runs continuously until the product on that machine is changed. Second, the curing oven is essentially a narrow tube and is different from a spray booth or other type of enclosure used in other coating operations. Third, the catalyst bed or burner tube in the curing oven is integral to the curing oven and it must function properly to make a salable product. If the curing oven, catalyst bed, or burner tube malfunction, the machine cannot make a product, regardless of the air quality impacts of the malfunction. Therefore, proper operation of the machine is inherently consistent with good air pollution control practices.

The commenters argued that these differences make the testing and monitoring requirements for sources with add-on controls inappropriate for magnet wire coating machines. In particular, emissions at the inlet of the burner tube or catalyst bed cannot be measured in order to determine destruction efficiency across the burner tube or catalyst bed. Measuring destruction efficiency is also complicated by the fact that the oven recirculates emissions before a portion of the flow is vented to the atmosphere.

The commenters also noted that since magnet wire ovens are different from spray booths and other types of enclosures, the capture efficiency monitoring provisions are inappropriate. Since workers must access the wire inlets and outlets of the ovens while the machines are operating, it would be difficult to maintain the operating limits specified for enclosures used with add-on controls. Worker access would also prevent many ovens from meeting the criteria for permanent total enclosures.

Finally, the commenters noted that many magnet wire facilities have dozens, and occasionally hundreds, of magnet wire coating machines and that each machine has its own oven and burner tube or catalyst bed. Therefore, it would be overly burdensome to require emission testing of each magnet wire coating machine as part of an initial compliance demonstration and to require continuous parameter monitoring to demonstrate ongoing compliance. The commenters proposed changes included alternative emission testing and monitoring provisions.

Response: We agree with the commenters that magnet wire facilities are substantially different from other surface coating sources with conventional capture systems and add-on controls, and these differences were not reflected in the proposed rule. The final rule incorporates emission testing and parameter monitoring provisions that reflect the practical constraints of this industry.

The final rule includes alternative procedures for capture efficiency and destruction efficiency measurement where the control device is internal and integral to the oven so that it is difficult or infeasible to make gas measurements at the inlet to the control device. These alternative procedures for the magnet wire industry have been consolidated into appendix A to the final rule.

The alternative procedures determine the organic carbon content of the volatile matter entering the control device based on the quantity of coating used, the carbon content of the volatile portion of the coating, and the efficiency of the capture system. The organic carbon content of the control device outlet (oven exhaust for ovens without an external afterburner) is determined using Method 25 or 25A. You do not need to test every magnet wire coating machine. Instead, with approval you may test a single unit that represents identical or very similar magnet wire coating machines. We agree with the commenters that identical or very similar magnet wire coating machines achieve very similar capture and control device efficiencies, and it would be overly burdensome to test every machine at a facility. However, it is important to note that every untested magnet wire coating machine must comply with the operating limits that are established during the performance test of the representative unit.

If the capture system for a magnet wire coating machine meets the definition of a permanent total enclosure, then you may assume capture efficiency is 100 percent and no measure of capture efficiency is needed. Otherwise, capture efficiency can be measured using a liquid-to-uncaptured-gas protocol using a temporary total enclosure, or an alternative capture efficiency protocol meeting data quality objectives or lower confidence limits as described in appendix A to the National Emission Standards for the Printing and Publishing Industry (40 CFR part 63, subpart KK). These approaches are more appropriate when it is difficult or infeasible to make gas measurements at the inlet to the control device for measuring capture efficiency with a gas-to-gas protocol.

Capture efficiency of each magnet wire coating machine will be monitored by requiring each oven to be fitted with an interlock that will stop the coating process or with an alarm that will sound if a fan becomes inoperable or if the oven begins to overheat. Overheating is an indirect indicator that a fan in the oven is inoperable. Each oven must also be checked once every 6 months with a smoke stick to ensure that air is being pulled into the oven.

An alternative procedure for monitoring catalytic oxidizers on magnet wire coating machines is provided in appendix A of the final rule. This alternative allows you to develop and implement an inspection and maintenance plan as described in appendix A of the final rule and to measure the temperature either before or after the catalyst bed and compare the measured temperature to the operating limit. In addition to the inspection and maintenance plan, you must either perform periodic catalyst activity checks, or check the concentration of organic compounds in the oven exhaust.

Comment: Two commenters argued that annual sampling of catalyst activity in § 63.3967(b)(4)(i) as proposed is too frequent and would cause excessive downtime and unreasonable costs to

remove and sample the catalyst for the magnet wire industry. The commenter noted that catalyst beds routinely perform at compliance levels for 2 or more years. The commenter believes that the final rule should require periodic sampling following the manufacturer's and catalyst supplier's recommended schedule and procedures and dictated by unit operation and maintenance records. In addition, the commenter stated that it is not necessary to conduct a performance test whenever the catalyst is replaced. Replacing the catalyst in itself ensures compliance, as long as the operating limits specified in Table 1 of the rule as proposed are achieved.

Response: We agree with the commenter that periodic sampling and analysis of the catalyst activity is sufficient for the magnet wire industry because the catalyst bed is integral to the proper functioning of the oven and the coating process. Therefore, for the magnet wire industry, periodic sampling and analysis consistent with the catalyst suppliers recommendations are sufficient. We also agree that replacement of the catalyst bed generally does not require a new performance test. Therefore, the final rule does not require a new test as long as the catalyst is similar to the old catalyst in kind and quality. Otherwise, a new test will be required.

Comment: Two commenters contended that the proposed requirements in § 63.3967(b)(4)(ii) and (iii) to perform monthly inspections of catalytic oxidizers are not practical or necessary for magnet wire coating machines because the burners and catalyst beds are inside the machine and integral to the proper functioning of the coating process. The commenters suggested a monthly external inspection and an annual internal inspection.

Response: We agree with the commenters that the proposed provisions were not practical or necessary for magnet wire sources. The final rule requires a monthly external inspection and an annual internal inspection. The annual internal inspection is not required for internal catalysts which cannot be accessed without disassembling the oven.

V. Summary of Environmental, Energy, and Economic Impacts

Model plants were developed to aid in estimating the impacts the final rule would have on miscellaneous metal parts and products surface coating operations. Five model plants distinguished by size, as measured by the total volume of coating solids used, were developed. Impacts were then developed for each model plant, and these individual impacts were scaled to nationwide levels based on the number of facilities corresponding to each model plant size. We used the model plant approach because we did not have adequate data to estimate impacts for each actual facility.

A variety of compliance methods are available to the industry to meet the emission limits. We analyzed the information obtained from the industry survey responses, industry site visits, trade groups, and industry representatives to determine which compliance methods would most likely be used by existing and new sources. We expect that the most widely-used method for existing sources would be low-HAP content liquid coatings (coatings with HAP contents at or below the emission limits). Powder coatings, non-HAP cleaning materials, and add-on capture and control systems would likely be used by existing sources, but to a lesser extent. Various combinations of these methods may be used. New sources are expected to use a combination of powder coatings, low-HAP coatings, and non-HAP cleaning materials.

For the purpose of assessing potential cost and emission reduction impacts, we assumed that all existing sources would convert to liquid coatings and thinners with lower-HAP content than presently used and non-HAP cleaning materials. We assumed that new sources would use either powder coatings or lower-HAP coatings and non-HAP cleaning materials.

We first estimated the impacts of the emission limits on the five model plants. To scale up the model plant impacts to nationwide levels, we multiplied the individual model plant impacts by the estimated number of major sources in the United States corresponding to each plant size. We estimated that there are 1,500 existing major source facilities nationwide, and that an additional 45 new facilities will become affected sources each year.

A. What Are the Air Impacts?

For existing major sources, we estimated that compliance with the emission limits would result in reductions of nationwide organic HAP emissions of 25,822 tpy. This represents a reduction of about 48 percent from the 1997 baseline organic HAP emissions of 53,869 tpy.

To estimate the impacts of the final rule on new sources, we estimated the percentage of new facilities that would, in the absence of the standards, emit HAP at levels that would exceed the final rule. For new sources, we believe that many will use coating technologies that are considered to be ''state-of-the-art'' (*e.g.*, powder coatings and low-HAP liquid coatings). However, we assumed for the impacts estimation that the same percentage of both new and existing facilities would be noncomplying at baseline conditions. The baseline emission rate for these noncomplying facilities was assumed to be the same as that determined for the existing source model plants. Using these assumptions, we have estimated the nationwide organic HAP reductions resulting from new facilities complying with the final rule would be about 803 tpy from the 45 new sources that would become subject to the rule each year.

We predict that the emission limitations will not result in any significant secondary air impacts. We expect that the majority of facilities will switch to lower-or non-organic-HAP-containing materials to comply with the standards, rather than installing add-on control devices. Thus, increases in electricity consumption (which could lead to increases in emissions of nitrogen oxides, sulfur dioxide, carbon monoxide, and carbon dioxide from electric utilities) will be minimal.

B. What Are the Cost Impacts?

We have estimated the costs related to complying with the emission limitations and meeting the monitoring, recordkeeping, and reporting requirements. The costs to comply with the emission limitations include the increased cost of lower-HAP or non-HAP coating materials. Alternatively, facilities could choose to purchase, install, and operate capture systems and add-on control devices. We have assumed for this analysis that all affected facilities will comply through the use of lower-HAP containing or non-HAP coatings, thinners, and cleaning materials, and that these materials can be utilized without the need for capital expenditures. Annual costs for meeting the monitoring, recordkeeping, and reporting requirements of the final rule have also been included.

Existing Sources. We estimate total nationwide annual costs in the 5th year to comply with the emission limits to be $47.5 million for existing sources. These costs include approximately $8.9 million for direct costs associated with material usage and $38.6 million for recordkeeping and reporting.

To comply with the final rule, existing facilities will likely use lower-HAP or non-HAP coatings, thinners, and cleaning materials because such materials are generally available and becoming more widely available each year. Compliance costs were estimated

to be the incremental cost difference between the materials currently used and the complying materials. Estimates of cost impacts were based on five model plants that were developed to represent the range of sizes and coating materials found throughout the industry. Each model plant was assumed to comply with the final rule by switching to non-HAP adhesives, surface preparation materials and cleaning materials and reducing the organic HAP content of the coatings and thinners. The annual incremental cost of the reformulated raw materials ranged from approximately $2,635 for model plant 1, representing the segment of industry with the lowest coating solids usage; to $114,540 for model plant 5, representing the segment of industry that uses over 75,000 gal of coating solids. The nationwide cost impact was estimated for each industry segment by multiplying the annual costs for each model plant by the number of facilities represented by that model plant. A total nationwide cost impact associated with material usage was estimated by summing the nationwide costs for each of the five industry segments. In addition, we included estimates for monitoring, recordkeeping, and reporting costs for all 1,500 existing affected sources.

New Sources. We estimated total nationwide annual costs in the 5th year to comply with the emission limits to be $9.8 million for new sources. These costs include approximately $3.6 million for direct costs associated with material usage and $6.2 million for the costs of recordkeeping and reporting. These costs were estimated applying the same assumptions for estimating costs for existing sources. We estimated the number of new major sources to be 45 per year, based on an average growth rate of 3 percent per year.

C. What Are the Economic Impacts?

We prepared an economic impact analysis (EIA) to provide an estimate of the impacts the proposed rule would have on facilities, firms, and markets within this source category. Given the wide diversity of products that will be affected by the final rule, EPA relied upon estimated compliance costs and publicly available financial data on affected firms to determine these impacts.

In general, we expect the economic impacts of the final rule to be minimal, with little or no change in market prices or production. Therefore, no adverse impact will occur for those industries that consume coated metal parts such as building and construction, transportation equipment and vehicle parts, and other industrial and consumer products.

Based on the industry survey responses, EPA was able to identify 176 companies that owned 321 potentially affected facilities within this source category. Of this total, we obtained sales data for 147 companies and net income data for 76 companies. For those companies with sales data, the EIA indicates that these regulatory costs average less than 0.1 percent of company sales with a range from zero to 1.25 percent. For those companies with net income data, these regulatory costs average 0.2 percent of company net income with a range from zero to 3.6 percent. This analysis indicates that the cost of the final rule should not cause producers to cease or significantly alter their current operations. Hence, no firms or facilities are expected to be at risk of closure because of the final rule. For more information, consult Docket ID No. OAR–2003–0116 (formerly Docket No. A–97–34).

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

Based on information from the industry survey responses, we found no indication that the use of lower-HAP or non-HAP content coatings, thinners, and cleaning materials at existing sources would result in any increase or decrease in non-air health, environmental, and energy impacts. There would be no change in the utility requirements associated with the use of these materials, so there would be no change in the amount of energy consumed as a result of the material conversion. Because new sources are expected to comply with the final rule through the use of lower-HAP or non-HAP coating technologies rather than add-on control devices, there would be no significant change in energy usage.

We estimate that the emission limitations will have a minimal impact on water quality because only a few facilities are expected to comply by making process modifications or by using add-on control devices that would generate wastewater. However, because many lower-HAP and non-HAP materials are waterborne, an increase in wastewater generation from cleaning activities may result. Although additional wastewater may be generated by facilities switching to waterborne coatings, the amount of wastewater generated by these facilities is not expected to increase significantly. We also estimate that the emission limitations will result in a decrease in the amount of both solid and hazardous waste from facilities, as the majority of facilities will be using lower-organic-HAP-containing materials which will result in a decrease in the amount of waste materials that will have to be disposed of as hazardous.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation 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 collection requirements are not enforceable until OMB approves them.

The information collection 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 national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The final rule requires maintaining records of all coatings, thinners, and cleaning materials data and calculations used to determine compliance. This information includes the volume used during each 12-month compliance period, mass fraction of organic HAP, density, and, for coatings only, volume fraction of coating solids.

If an add-on control device is used, records must be kept of the capture efficiency of the capture system, destruction or removal efficiency of the add-on control device, and the monitored operating parameters. In addition, records must be kept of each calculation of the affected sourcewide emissions for each 12-month compliance period and all data, calculations, test results, and other supporting information used to determine this value.

The monitoring, recordkeeping, and reporting burden in the 5th year after the effective date of the promulgated rule is estimated to be 824,343 labor hours at a cost of $44.76 million for new and existing sources.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. When this information collection request 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 for 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 impact of the final rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards by NAICS code ranging from 100 to 1,000 employees or less than $5 million in annual sales; (2) a small governmental jurisdiction that is a government of a city, town, county, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently operated and is not dominant in its field. It should be noted that companies affected by the final rule and the small business definition applied to each industry by NAICS code is that listed in the SBA size standards (13 CFR part 121).

After considering the economic impacts of the 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. For purposes of assessing the impacts of the final rule on small entities, EPA conducted an assessment of the final rule on small businesses within the miscellaneous metal parts source category. Based on SBA size definitions and reported sales and employment data, EPA's survey identified 29 of the 147 companies owning major source facilities as small businesses. The average (median) total annual compliance cost is projected to be $59,000 ($36,000) per small company. Under the final rule, the average (median) annual compliance cost share of sales for small businesses was only 0.25 (0.04) percent with a range of zero to 1.25 percent.

Although the final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has worked aggressively to minimize the impact of the final rule on small entities. We solicited input from small entities during the data-gathering phase of the rulemaking. We are promulgating compliance options that give small entities flexibility in choosing the most cost-effective and least burdensome alternative for their operation. For example, a facility could purchase and use lower-or non-HAP coatings, thinners, and cleaning materials (*i.e.*, pollution prevention) that meet the final rule rather than being required to purchase add-on control systems. The lower- or non-HAP option can be demonstrated with minimum burden by using already-maintained purchase and usage records. No testing of materials would be required as the facility owner could show that their coatings meet the emission limits by providing formulation data supplied by the manufacturer.

We are also providing one option that allows compliance demonstrations to be conducted on a rolling 12-month basis, meaning that the facility would each month calculate a 12-month organic HAP emission rate for the previous 12 months to determine compliance. This will give affected small entities extra flexibility in complying with the emission limits since small entities are more likely to use lower monthly volumes and/or a limited number of materials. Furthermore, we are promulgating the minimum monitoring, recordkeeping, and reporting requirements needed for enforcement and compliance assurance.

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 to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and

informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the final rule for any 1 year has been estimated to be about $57.5 million. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, the 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'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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. Pursuant to the terms of Executive Order 13132, it has been determined that the final rule does not have ''federalism implications'' because it does not meet the necessary criteria. 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. The EPA is not aware of tribal governments that own or operate miscellaneous metal parts and products surface coating facilities. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, 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 does not establish environmental standards based on an assessment of health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations 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 energy action'' under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113; section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The final rule involves technical standards. The EPA cites the following standards in the final rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A–F, 311, and an alternative method to determine weight volatile matter content and weight solids content for reactive adhesives. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods/performance specifications. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A through 204F, 311, and an alternative method to determine weight volatile matter content and weight solids content for reactive adhesives. The search and review results have been documented and are placed in Docket ID No. OAR–2003–0116 (formerly Docket No. A–97–34).

Six VCS: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 1991), and ASTM D5403–93 are already incorporated by reference (IBR) in EPA Method 24. In addition, we are separately specifying the use of ASTM D1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products,'' for measuring the density of each coating, thinner and/or additive, and cleaning material. Five VCS: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are IBR in EPA Method 311.

Two VCS were identified for determining the volume fraction of coating solids for the final rule. The VCS are ASTM D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' and ASTM D6093–97 (Reapproved 2003), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer.'' These VCS fill a void in EPA Method 24 which directs that volume solids content be calculated from the coating manufacturer's formulation. The final rule does allow for the use of the volume solids content values calculated from the coating manufacturer's formulation; however, test results will take precedence if they do not agree with calculated values, unless after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct. In addition, ASTM D5965–02, ''Standard Test Methods for Specific Gravity of Coating Powders,'' is specified in the final rule as a method to determine the volume solids of powder coatings.

The VCS, ASTM D5291–02, ''Standard Test Methods for Instrumental Determination of Carbon,

Hydrogen, and Nitrogen in Petroleum Products and Lubricants,'' is specified in this rule to determine the weight fraction carbon content of each volatile distillate fraction obtained with Method 204F.

The VCS, ASTM D6053–00, ''Standard Test Method for Determination of Volatile Organic Compound (VOC) Content of Electrical Insulating Varnishes,'' is also specified in this rule as an alternative method to EPA Method 24 to determine the mass fraction of total volatile hydrocarbon for magnet wire enamels.

In addition to the VCS EPA uses in the final rule, the search for emissions measurement procedures identified 14 other VCS. The EPA determined that 11 of these 14 VCS identified for measuring emissions of the HAP or surrogates subject to emission standards in the final rule are impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, EPA does not intend to adopt the VCS for this purpose.

Three of the 14 VCS 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 VCS body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; and ISO/CD 17895, ''Paints and Varnishes-Determination of the Volatile Organic Compound Content of Water-based Emulsion Paints,'' for EPA Method 24.

Under 40 CFR 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 of the 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 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. The EPA will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final 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). The rule will be effective January 2, 2004.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 20, 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.*

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraphs (b)(24) (25), and (26), and adding new paragraphs (b)(31), (32), and (33) to read as follows:

§ 63.14 Incorporations by reference

* * * * *

(b) * * *

(24) ASTM D2697–86 (Reapproved 1998), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for §§ 63.3521(b)(1), 63.3941(b)(1), 63.4141(b)(1), 63.4741(b)(1), 63.4941(b)(1), and 63.5160(c).

(25) ASTM D6093–97 (Reapproved 2003), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, IBR approved for §§ 63.3521(b)(1), 63.3941(b)(1), 63.4141(b)(1), 63.4741(b)(1), 63.4941(b)(1), and 63.5160(c).

(26) ASTM D1475–98, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, IBR approved for §§ 63.3941(b)(4), 63.3941(c), 63.3951(c), 63.4141(b)(3), and 63.4141(c).

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(31) ASTM D5291–02, Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants, IBR approved for § 63.3981, appendix A.

(32) ASTM D5965–02, Standard Test Methods for Specific Gravity of Coating Powders, IBR approved for § 63.3951(c).

(33) ASTM D6053–00, Standard Test Method for Determination of Volatile Organic Compound (VOC) Content of Electrical Insulating Varnishes, IBR approved for § 63.3981, appendix A.

* * * * *

■ 3. Part 63 is amended by adding subpart MMMM to read as follows:

Subpart MMMM—National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products

Sec.

What This Subpart Covers

63.3880 What is the purpose of this subpart?
63.3881 Am I subject to this subpart?
63.3882 What parts of my plant does this subpart cover?
63.3883 When do I have to comply with this subpart?

Emission Limitations

63.3890 What emission limits must I meet?
63.3891 What are my options for meeting the emission limits?
63.3892 What operating limits must I meet?
63.3893 What work practice standards must I meet?

General Compliance Requirements

63.3900 What are my general requirements for complying with this subpart?
63.3901 What parts of the General Provisions apply to me?

Notifications, Reports, and Records

63.3910 What notifications must I submit?
63.3920 What reports must I submit?
63.3930 What records must I keep?
63.3931 In what form and for how long must I keep my records?

Compliance Requirements for the Compliant Material Option

63.3940 By what date must I conduct the initial compliance demonstration?
63.3941 How do I demonstrate initial compliance with the emission limitations?
63.3942 How do I demonstrate continuous compliance with the emission limitations?

Compliance Requirements for the Emission Rate Without Add-On Controls Option

63.3950 By what date must I conduct the initial compliance demonstration?
63.3951 How do I demonstrate initial compliance with the emission limitations?
63.3952 How do I demonstrate continuous compliance with the emission limitations?

Compliance Requirements for the Emission Rate With Add-On Controls Option

63.3960 By what date must I conduct performance tests and other initial compliance demonstrations?
63.3961 How do I demonstrate initial compliance?
63.3962 [Reserved]

63.3963 How do I demonstrate continuous compliance with the emission limitations?
63.3964 What are the general requirements for performance tests?
63.3965 How do I determine the emission capture system efficiency?
63.3966 How do I determine the add-on control device emission destruction or removal efficiency?
63.3967 How do I establish the emission capture system and add-on control device operating limits during the performance test?
63.3968 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

Other Requirements and Information

63.3980 Who implements and enforces this subpart?
63.3981 What definitions apply to this subpart?

Tables to Subpart MMMM of Part 63

Table 1 to Subpart MMMM of Part 63—Operating Limits if Using the Emission Rate with Add-on Controls Option
Table 2 to Subpart MMMM of Part 63—Applicability of General Provisions to Subpart MMMM of Part 63
Table 3 to Subpart MMMM of Part 63—Default Organic HAP Mass Fraction for Solvents and Solvent Blends
Table 4 to Subpart MMMM of Part 63—Default Organic HAP Mass Fraction for Petroleum Solvent Groups

Appendix A to Subpart MMMM of Part 63—Alternative Capture Efficiency and Destruction Efficiency Measurement and Capture Efficiency Monitoring Procedures for Magnet Wire Coating Operations

Subpart MMMM—National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products

What This Subpart Covers

§ 63.3880 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for miscellaneous metal parts and products surface coating facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.3881 Am I subject to this subpart?

(a) Miscellaneous metal parts and products include, but are not limited to, metal components of the following types of products as well as the products themselves: motor vehicle parts and accessories, bicycles and sporting goods, recreational vehicles, extruded aluminum structural components, railroad cars, heavy duty trucks, medical equipment, lawn and garden equipment, electronic equipment, magnet wire, steel drums, industrial machinery, metal pipes, and numerous other industrial, household, and consumer products. Except as provided in paragraph (c) of this section, the source category to which this subpart applies is the surface coating of any miscellaneous metal parts or products, as described in paragraph (a)(1) of this section, and it includes the subcategories listed in paragraphs (a)(2) through (6) of this section.

(1) Surface coating is the application of coating to a substrate using, for example, spray guns or dip tanks. When application of coating to a substrate occurs, then surface coating also includes associated activities, such as surface preparation, cleaning, mixing, and storage. However, these activities do not comprise surface coating if they are not directly related to the application of the coating. Coating application with handheld, non-refillable aerosol containers, touch-up markers, marking pens, or the application of paper film or plastic film which may be pre-coated with an adhesive by the manufacturer are not coating operations for the purposes of this subpart.

(2) The general use coating subcategory includes all surface coating operations that are not high performance, magnet wire, rubber-to-metal, or extreme performance fluoropolymer coating operations.

(3) The high performance coating subcategory includes surface coating operations that are performed using coatings that meet the definition of high performance architectural coating or high temperature coating in § 63.3981.

(4) The magnet wire coating subcategory includes surface coating operations that are performed using coatings that meet the definition of magnet wire coatings in § 63.3981.

(5) The rubber-to-metal coatings subcategory includes surface coating operations that are performed using coatings that meet the definition of rubber-to-metal coatings in § 63.3981.

(6) The extreme performance fluoropolymer coatings subcategory includes surface coating operations that are performed using coatings that meet the definition of extreme performance fluoropolymer coatings in § 63.3981.

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.3882, that uses 946 liters (250 gallons (gal)) per year, or more, of coatings that contain hazardous air pollutants (HAP) in the surface coating of miscellaneous metal parts and products defined in paragraph (a) of this section; and that is a major source, is located at a major source, or is part of a major source of emissions of HAP. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year. You do not need to include coatings that meet the definition of non-HAP coating contained in § 63.3981 in determining whether you use 946 liters (250 gal) per year, or more, of coatings in the surface coating of miscellaneous metal parts and products.

(c) This subpart does not apply to surface coating or a coating operation that meets any of the criteria of paragraphs (c)(1) through (17) of this section.

(1) A coating operation conducted at a facility where the facility uses only coatings, thinners and other additives, and cleaning materials that contain no organic HAP, as determined according to § 63.3941(a).

(2) Surface coating operations that occur at research or laboratory facilities, or is part of janitorial, building, and facility maintenance operations, or that occur at hobby shops that are operated for noncommercial purposes.

(3) Coatings used in volumes of less than 189 liters (50 gal) per year, provided that the total volume of coatings exempt under this paragraph does not exceed 946 liters (250 gal) per year at the facility.

(4) The surface coating of metal parts and products performed on-site at installations owned or operated by the Armed Forces of the United States (including the Coast Guard and the National Guard of any such State) or the National Aeronautics and Space Administration, or the surface coating of military munitions manufactured by or for the Armed Forces of the United States (including the Coast Guard and the National Guard of any such State).

(5) Surface coating where plastic is extruded onto metal wire or cable or metal parts or products to form a coating.

(6) Surface coating of metal components of wood furniture that meet the applicability criteria for wood furniture manufacturing (subpart JJ of this part).

(7) Surface coating of metal components of large appliances that meet the applicability criteria for large appliance surface coating (subpart NNNN of this part).

(8) Surface coating of metal components of metal furniture that meet

the applicability criteria for metal furniture surface coating (subpart RRRR of this part).

(9) Surface coating of metal components of wood building products that meet the applicability criteria for wood building products surface coating (subpart QQQQ of this part).

(10) Surface coating of metal components of aerospace vehicles that meet the applicability criteria for aerospace manufacturing and rework (40 CFR part 63, subpart GG).

(11) Surface coating of metal parts intended for use in an aerospace vehicle or component using specialty coatings as defined in appendix A to subpart GG of this part.

(12) Surface coating of metal components of ships that meet the applicability criteria for shipbuilding and ship repair (subpart II of this part).

(13) Surface coating of metal using a web coating process that meets the applicability criteria for paper and other web coating (subpart JJJJ of this part).

(14) Surface coating of metal using a coil coating process that meets the applicability criteria for metal coil coating (subpart SSSS of this part).

(15) Surface coating of boats or metal parts of boats (including, but not limited to, the use of assembly adhesives) where the facility meets the applicability criteria for boat manufacturing facilities (subpart VVVV of this part), except where the surface coating of the boat is a metal coating operation performed on personal watercraft or parts of personal watercraft. This subpart does apply to metal coating operations performed on personal watercraft and parts of personal watercraft.

(16) Surface coating of assembled on-road vehicles that meet the applicability criteria for the assembled on-road vehicle subcategory in plastic parts and products surface coating (40 CFR part 63, subpart PPPP).

(17) Reserved.

(d) Reserved.

(e) If you own or operate an affected source that meets the applicability criteria of this subpart and at the same facility you also perform surface coating that meets the applicability criteria of any other final surface coating NESHAP in this part you may choose to comply as specified in paragraph (e)(1), (2), or (3) of this section.

(1) You may have each surface coating operation that meets the applicability criteria of a separate NESHAP comply with that NESHAP separately.

(2) You may comply with the emission limitation representing the predominant surface coating activity at your facility, as determined according to paragraphs (e)(2)(i) through (ii) of this section. However, you may not establish high performance, rubber-to-metal, and extreme performance fluoropolymer coating operations as the predominant activity.

(i) If a surface coating operation accounts for 90 percent or more of the surface coating activity at your facility (that is, the predominant activity), then compliance with the emission limitations of the predominant activity for all surface coating operations constitutes compliance with these and other applicable surface coating NESHAP. In determining predominant activity, you must include coating activities that meet the applicability criteria of other surface coating NESHAP and constitute more than 1 percent of total coating activities at your facility. Coating activities that meet the applicability criteria of other surface coating NESHAP but comprise less than 1 percent of coating activities need not be included in the determination of predominant activity but must be included in the compliance calculation.

(ii) You must use liters (gal) of solids used as a measure of relative surface coating activity over a representative period of operation. You may estimate the relative volume of coating solids used from parameters other than coating consumption and volume solids content (*e.g.*, design specifications for the parts or products coated and the number of items produced). The determination of predominant activity must accurately reflect current and projected coating operations and must be verifiable through appropriate documentation. The use of parameters other than coating consumption and volume solids content must be approved by the Administrator. You may use data for any reasonable time period of at least 1 year in determining the relative amount of coating activity, as long as they represent the way the source will continue to operate in the future and are approved by the Administrator. You must determine the predominant activity at your facility and submit the results of that determination with the initial notification required by § 63.3910(b). You must also determine predominant activity annually and include the determination in the next semi-annual compliance report required by § 63.3920(a).

(3) You may comply with a facility-specific emission limit calculated from the relative amount of coating activity that is subject to each emission limit. If you elect to comply using the facility-specific emission limit alternative, then compliance with the facility-specific emission limit and the emission limitations in this subpart for all surface coating operations constitutes compliance with this and other applicable surface coating NESHAP. The procedures for calculating the facility-specific emission limit are specified in § 63.3890. In calculating a facility-specific emission limit, you must include coating activities that meet the applicability criteria of other surface coating NESHAP and constitute more than 1 percent of total coating activities at your facility. Coating activities that meet the applicability criteria of other surface coating NESHAP but comprise less than 1 percent of total coating activities need not be included in the calculation of the facility-specific emission limit. Compliance with the facility-specific emission limit and all other applicable provisions of this subpart for all surface coating operations constitutes compliance with this and all other applicable surface coating NESHAP.

§ 63.3882 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source within each of the four subcategories listed in § 63.3881(a).

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are used for surface coating of miscellaneous metal parts and products within each subcategory.

(1) All coating operations as defined in § 63.3981;

(2) All storage containers and mixing vessels in which coatings, thinners and/or other additives, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners and/or other additives, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) An affected source is a new affected source if you commenced its construction after August 13, 2002 and the construction is of a completely new miscellaneous metal parts and products surface coating facility where previously no miscellaneous metal parts and products surface coating facility had existed.

(d) An affected source is reconstructed if it meets the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.3883 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstration described in §§ 63.3940, 63.3950, and 63.3960.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section:

(1) If the initial startup of your new or reconstructed affected source is before January 2, 2004, the compliance date is January 2, 2004.

(2) If the initial startup of your new or reconstructed affected source occurs after January 2, 2004, the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is the date 3 years after January 2, 2004.

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source or January 2, 2004, whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or 3 years after January 2, 2004, whichever is later.

(d) You must meet the notification requirements in § 63.3910 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.3890 What emission limits must I meet?

(a) For a new or reconstructed affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the applicable limit specified in paragraphs (a)(1) through (5) of this section, except as specified in paragraph (c) of this section, determined according to the requirements in § 63.3941, § 63.3951, or § 63.3961.

(1) For each new general use coating affected source, limit organic HAP emissions to no more than 0.23 kilograms (kg) (1.9 pound (lb)) organic HAP per liter (gal) coating solids used during each 12-month compliance period.

(2) For each new high performance coating affected source, limit organic HAP emissions to no more than 3.3 kg (27.5 lb) organic HAP per liter (gal) coating solids used during each 12-month compliance period.

(3) For each new magnet wire coating affected source, limit organic HAP emissions to no more than 0.050 kg (0.44 lb) organic HAP per liter (gal) coating solids used during each 12-month compliance period.

(4) For each new rubber-to-metal coating affected source, limit organic HAP emissions to no more than 0.81 kg (6.8 lb) organic HAP per liter (gal) coating solids used during each 12-month compliance period.

(5) For each new extreme performance fluoropolymer coating affected source, limit organic HAP emissions to no more than 1.5 kg (12.4 lb) organic HAP per liter (gal) coating solids used during each 12-month compliance period.

(b) For an existing affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the applicable limit specified in paragraphs (b)(1) through (5) of this section, except as specified in paragraph (c) of this section, determined according to the requirements in § 63.3941, § 63.3951, or § 63.3961.

(1) For each existing general use coating affected source, limit organic HAP emissions to no more than 0.31 kg (2.6 lb) organic HAP per liter (gal) coating solids used during each 12-month compliance period.

(2) For each existing high performance coating affected source, limit organic HAP emissions to no more than 3.3 kg (27.5 lb) organic HAP per liter (gal) coating solids used during each 12-month compliance period.

(3) For each existing magnet wire coating affected source, limit organic HAP emissions to no more than 0.12 kg (1.0 lb) organic HAP per liter (gal) coating solids used during each 12-month compliance period.

(4) For each existing rubber-to-metal coating affected source, limit organic HAP emissions to no more than 4.5 kg (37.7 lb) organic HAP per liter (gal) coating solids used during each 12-month compliance period.

(5) For each existing extreme performance fluoropolymer coating affected source, limit organic HAP emissions to no more than 1.5 kg (12.4 lbs) organic HAP per liter (gal) coating solids used during each 12-month compliance period.

(c) If your facility's surface coating operations meet the applicability criteria of more than one of the subcategory emission limits specified in paragraphs (a) or (b) of this section, you may comply separately with each subcategory emission limit or comply using one of the alternatives in paragraph (c)(1) or (2) of this section.

(1) If the general use or magnet wire surface coating operations subject to only one of the emission limits specified in paragraphs (a)(1), (3), (b)(1), or (3) of this section account for 90 percent or more of the surface coating activity at your facility (*i.e.*, it is the predominant activity at your facility), then compliance with that one emission limitations in this subpart for all surface coating operations constitutes compliance with the other applicable emission limits. You must use liters (gal) of solids used as a measure of relative surface coating activity over a representative period of operation. You may estimate the relative volume of coating solids used from parameters other than coating consumption and volume solids content (*e.g.*, design specifications for the parts or products coated and the number of items produced). The determination of predominant activity must accurately reflect current and projected coating operations and must be verifiable through appropriate documentation. The use of parameters other than coating consumption and volume solids content must be approved by the Administrator. You may use data for any reasonable time period of at least 1 year in determining the relative amount of coating activity, as long as they represent the way the source will continue to operate in the future and are approved by the Administrator. You must determine the predominant activity at your facility and submit the results of that determination with the initial notification required by § 63.3910(b). Additionally, you must determine the facility's predominant activity annually and include the determination in the next semi-annual compliance report required by § 63.3920(a).

(2) You may calculate and comply with a facility-specific emission limit as described in paragraphs (c)(2)(i) through (iii) of this section. If you elect to comply using the facility-specific emission limit alternative, then compliance with the facility-specific emission limit and the emission limitations in this subpart for all surface coating operations constitutes compliance with this and other

applicable surface coating NESHAP. In calculating a facility-specific emission limit, you must include coating activities that meet the applicability criteria of the other subcategories and constitute more than 1 percent of total coating activities. Coating activities that meet the applicability criteria of other surface coating NESHAP but comprise less than 1 percent of coating activities need not be included in the determination of predominant activity but must be included in the compliance calculation.

(i) You are required to calculate the facility-specific emission limit for your facility when you submit the notification of compliance status required in § 63.3910(c), and on a monthly basis afterward using the coating data for the relevant 12-month compliance period.

(ii) Use Equation 1 of this section to calculate the facility-specific emission limit for your surface coating operations for each 12-month compliance period.

$$\text{Facility-Specific Emission Limit} = \frac{\sum_{i=1}^{n}(\text{Limit}_i)(\text{Solids}_i)}{\sum_{i=1}^{n}(\text{Solids}_i)} \qquad \text{(Eq. 1)}$$

Where:

Facility-specific emission limit = Facility-specific emission limit for each 12-month compliance period, kg (lb) organic HAP per kg (lb) coating solids used.

$Limit_i$ = The new source or existing source emission limit applicable to coating operation, i, included in the facility-specific emission limit, converted to kg (lb) organic HAP per kg (lb) coating solids used, if the emission limit is not already in those units. All emission limits included in the facility-specific emission limit must be in the same units.

$Solids_i$ = The liters (gal) of solids used in coating operation, i, in the 12-month compliance period that is subject to emission limit, i. You may estimate the volume of coating solids used from parameters other than coating consumption and volume solids content (*e.g.*, design specifications for the parts or products coated and the number of items produced). The use of parameters other than coating consumption and volume solids content must be approved by the Administrator.

n = The number of different coating operations included in the facility-specific emission limit.

(iii) If you need to convert an emission limit in another surface coating NESHAP from kg (lb) organic HAP per kg (lb) coating solids used to kg (lb) organic HAP per liter (gal) coating solids used, you must use the default solids density of 1.26 kg solids per liter coating solids (10.5 lb solids per gal solids).

§ 63.3891 What are my options for meeting the emission limits?

You must include all coatings (as defined in § 63.3981), thinners and/or other additives, and cleaning materials used in the affected source when determining whether the organic HAP emission rate is equal to or less than the applicable emission limit in § 63.3890. To make this determination, you must use at least one of the three compliance options listed in paragraphs (a) through (c) of this section. You may apply any of the compliance options to an individual coating operation, or to multiple coating operations as a group, or to the entire affected source. You may use different compliance options for different coating operations, or at different times on the same coating operation. You may employ different compliance options when different coatings are applied to the same part, or when the same coating is applied to different parts. However, you may not use different compliance options at the same time on the same coating operation. If you switch between compliance options for any coating operation or group of coating operations, you must document this switch as required by § 63.3930(c), and you must report it in the next semiannual compliance report required in § 63.3920.

(a) *Compliant material option.* Demonstrate that the organic HAP content of each coating used in the coating operation(s) is less than or equal to the applicable emission limit in § 63.3890, and that each thinner and/or other additive, and cleaning material used contains no organic HAP. You must meet all the requirements of §§ 63.3940, 63.3941, and 63.3942 to demonstrate compliance with the applicable emission limit using this option.

(b) *Emission rate without add-on controls option.* Demonstrate that, based on the coatings, thinners and/or other additives, and cleaning materials used in the coating operation(s), the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.3890, calculated as a rolling 12-month emission rate and determined on a monthly basis. You must meet all the requirements of §§ 63.3950, 63.3951, and 63.3952 to demonstrate compliance with the emission limit using this option.

(c) *Emission rate with add-on controls option.* Demonstrate that, based on the coatings, thinners and/or other additives, and cleaning materials used in the coating operation(s), and the emissions reductions achieved by emission capture systems and add-on controls, the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.3890, calculated as a rolling 12-month emission rate and determined on a monthly basis. If you use this compliance option, you must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) meet the operating limits required in § 63.3892, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j), and that you meet the work practice standards required in § 63.3893. You must meet all the requirements of §§ 63.3960 through 63.3968 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

§ 63.3892 What operating limits must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any operating limits.

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option, except those for which you use a solvent recovery system and conduct

a liquid-liquid material balance according to § 63.3961(j), you must meet the operating limits specified in Table 1 to this subpart. These operating limits apply to the emission capture and control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during the performance test according to the requirements in § 63.3967. You must meet the operating limits at all times after you establish them.

(c) If you use an add-on control device other than those listed in Table 1 to this subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.3893 What work practice standards must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any work practice standards.

(b) If you use the emission rate with add-on controls option, you must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners and/or other additives, and cleaning materials used in, and waste materials generated by the controlled coating operation(s) for which you use this option; or you must meet an alternative standard as provided in paragraph (c) of this section. The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coatings, thinners and/or other additives, cleaning materials, and waste materials must be stored in closed containers.

(2) Spills of organic-HAP-containing coatings, thinners and/or other additives, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coatings, thinners and/or other additives, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) As provided in § 63.6(g), we, the U.S. Environmental Protection Agency, may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.3900 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.3891(a) and (b), must be in compliance with the applicable emission limit in § 63.3890 at all times.

(2) Any coating operation(s) for which you use the emission rate with add-on controls option, as specified in § 63.3891(c), must be in compliance with the emission limitations as specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) The coating operation(s) must be in compliance with the applicable emission limit in § 63.3890 at all times except during periods of startup, shutdown, and malfunction.

(ii) The coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3892 at all times except during periods of startup, shutdown, and malfunction, and except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j).

(iii) The coating operation(s) must be in compliance with the work practice standards in § 63.3893 at all times.

(b) You must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i).

(c) If your affected source uses an emission capture system and add-on control device, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The plan must address the startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures.

§ 63.3901 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.

Notifications, Reports, and Records

§ 63.3910 What notifications must I submit?

(a) *General.* You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial notification.* You must submit the initial notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after January 2, 2004, whichever is later. For an existing affected source, you must submit the initial notification no later than 1 year after January 2, 2004. If you are using compliance with the Automobiles and Light-Duty Trucks NESHAP (subpart IIII of this part) under § 63.3881(d) to constitute compliance with this subpart for your metal part coating operations, then you must include a statement to this effect in your initial notification and no other notifications are required under this subpart. If you are complying with another NESHAP that constitutes the predominant activity at your facility under § 63.3881(e)(2) to constitute compliance with this subpart for your metal coating operations, then you must include a statement to this effect in your initial notification and no other notifications are required under this subpart.

(c) *Notification of compliance status.* You must submit the notification of compliance status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in §§ 63.3940, 63.3950, or 63.3960 that applies to your affected source. The notification of compliance status must contain the information specified in paragraphs (c)(1) through (11) of this section and in § 63.9(h).

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in §§ 63.3940, 63.3950, or 63.3960 that applies to your affected source.

(4) Identification of the compliance option or options specified in § 63.3891 that you used on each coating operation in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (c)(6)(i) and (ii) of this section.

(i) A description and statement of the cause of the deviation.

(ii) If you failed to meet the applicable emission limit in § 63.3890, include all the calculations you used to determine the kg (lb) of organic HAP emitted per liter (gal) coating solids used. You do not need to submit information provided by the materials' suppliers or manufacturers, or test reports.

(7) For each of the data items listed in paragraphs (c)(7)(i) through (iv) of this section that is required by the compliance option(s) you used to demonstrate compliance with the emission limit, include an example of how you determined the value, including calculations and supporting data. Supporting data may include a copy of the information provided by the supplier or manufacturer of the example coating or material, or a summary of the results of testing conducted according to § 63.3941(a), (b), or (c). You do not need to submit copies of any test reports.

(i) Mass fraction of organic HAP for one coating, for one thinner and/or other additive, and for one cleaning material.

(ii) Volume fraction of coating solids for one coating.

(iii) Density for one coating, one thinner and/or other additive, and one leaning material, except that if you use the compliant material option, only the example coating density is required.

(iv) The amount of waste materials and the mass of organic HAP contained in the waste materials for which you are claiming an allowance in Equation 1 of § 63.3951.

(8) The calculation of kg (lb) of organic HAP emitted per liter (gal) coating solids used for the compliance option(s) you used, as specified in paragraphs (c)(8)(i) through (iii) of this section.

(i) For the compliant material option, provide an example calculation of the organic HAP content for one coating, using Equation 2 of § 63.3941.

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions for each month; the calculation of the total volume of coating solids used each month; and the calculation of the 12-month organic HAP emission rate using Equations 1 and 1A through 1C, 2, and 3, respectively, of § 63.3951.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings, thinners and/or other additives, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.3951; the calculation of the total volume of coating solids used each month using Equation 2 of § 63.3951; the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices using Equations 1 and 1A through 1D of § 63.3961 and Equations 2, 3, and 3A through 3C of § 63.3961 as applicable; the calculation of the total mass of organic HAP emissions each month using Equation 4 of § 63.3961; and the calculation of the 12-month organic HAP emission rate using Equation 5 of § 63.3961.

(9) For the emission rate with add-on controls option, you must include the information specified in paragraphs (c)(9)(i) through (iv) of this section, except that the requirements in paragraphs (c)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j).

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a permanent total enclosure (PTE) or a measurement of the emission capture system efficiency. Include a description of the protocol followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.3893.

(10) If you are complying with a single emission limit representing the predominant activity under § 63.3890(c)(1), include the calculations and supporting information used to demonstrate that this emission limit represents the predominant activity as specified in § 63.3890(c)(1).

(11) If you are complying with a facility-specific emission limit under § 63.3890(c)(2), include the calculation of the facility-specific emission limit and any supporting information as specified in § 63.3890(c)(2).

§ 63.3920 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (7) of this section. The semiannual compliance reporting requirements may be satisfied by reports required under other parts of the Clean Air Act (CAA), as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved or agreed to a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this section. Note that the information reported for each of the months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.3940, § 63.3950, or § 63.3960 that applies to your affected source and ends on June 30 or December 31, whichever date is the first date following the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(iv) 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 date specified in paragraph (a)(1)(iii) of this section.

(2) *Inclusion with title V report.* Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 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 an affected source submits a semiannual compliance report pursuant to this section 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 semiannual compliance report includes all required information concerning deviations from any emission limitation in this subpart, its submission will be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (vii) of this section, and the information specified in paragraphs (a)(4) through (7) and (c)(1) of this section that is applicable to your affected source.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31. Note that the information reported for each of the 6 months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(iv) Identification of the compliance option or options specified in § 63.3891 that you used on each coating operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates for each option you used.

(v) If you used the emission rate without add-on controls or the emission rate with add-on controls compliance option (§ 63.3891(b) or (c)), the calculation results for each rolling 12-month organic HAP emission rate during the 6-month reporting period.

(vi) If you used the predominant activity alternative (§ 63.3890(c)(1)), include the annual determination of predominant activity if it was not included in the previous semi-annual compliance report.

(vii) If you used the facility-specific emission limit alternative (§ 63.3890(c)(2)), include the calculation of the facility-specific emission limit for each 12-month compliance period during the 6-month reporting period.

(4) *No deviations.* If there were no deviations from the emission limitations in §§ 63.3890, 63.3892, and 63.3893 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used the emission rate with add-on controls option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out-of-control during the reporting period.

(5) *Deviations: Compliant material option.* If you used the compliant material option and there was a deviation from the applicable organic HAP content requirements in § 63.3890, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) Identification of each coating used that deviated from the applicable emission limit, and each thinner and/or other additive, and cleaning material used that contained organic HAP, and the dates and time periods each was used.

(ii) The calculation of the organic HAP content (using Equation 2 of § 63.3941) for each coating identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (*e.g.*, information provided by coating suppliers or manufacturers, or test reports).

(iii) The determination of mass fraction of organic HAP for each thinner and/or other additive, and cleaning material identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (*e.g.*, information provided by material suppliers or manufacturers, or test reports).

(iv) A statement of the cause of each deviation.

(6) *Deviations: Emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.3890, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iii) of this section.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.3890.

(ii) The calculations used to determine the 12-month organic HAP emission rate for the compliance period in which the deviation occurred. You must submit the calculations for Equations 1, 1A through 1C, 2, and 3 of § 63.3951; and if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3951(e)(4). You do not need to submit background data supporting these calculations (*e.g.*, information provided by materials suppliers or manufacturers, or test reports).

(iii) A statement of the cause of each deviation.

(7) *Deviations: Emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.3890.

(ii) The calculations used to determine the 12-month organic HAP emission rate for each compliance period in which a deviation occurred. You must provide the calculation of the total mass of organic HAP emissions for the coatings, thinners and/or other additives, and cleaning materials used each month using Equations 1 and 1A through 1C of § 63.3951; and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3951(e)(4); the calculation of the total volume of coating solids used each month using Equation 2 of § 63.3951; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices using Equations 1 and 1A through 1D of § 63.3961, and Equations 2, 3, and 3A through 3C of § 63.3961, as applicable; the calculation of the total mass of organic HAP emissions each month using Equation 4 of § 63.3961; and the calculation of the 12-month

organic HAP emission rate using Equation 5 of § 63.3961. You do not need to submit the background data supporting these calculations (*e.g.*, information provided by materials suppliers or manufacturers, or test reports).

(iii) The date and time that each malfunction started and stopped.

(iv) A brief description of the CPMS.

(v) The date of the latest CPMS certification or audit.

(vi) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vii) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(viii) The date and time period of each deviation from an operating limit in Table 1 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(ix) A summary of the total duration of each deviation from an operating limit in Table 1 to this subpart and each bypass of the add-on control device during the semiannual reporting period, and the total duration as a percent of the total source operating time during that semiannual reporting period.

(x) A breakdown of the total duration of the deviations from the operating limits in Table 1 of this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(xi) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(xii) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xiii) For each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation.

(xiv) A statement of the cause of each deviation.

(b) *Performance test reports.* If you use the emission rate with add-on controls option, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *Startup, shutdown, malfunction reports.* If you used the emission rate with add-on controls option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your startup, shutdown, and malfunction plan, you must include the information specified in § 63.10(d) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report as described in paragraphs (c)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.3930 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep these records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart, and the documentation supporting each notification and report. If you are using the predominant activity alternative under § 63.3890(c), you must keep records of the data and calculations used to determine the predominant activity. If you are using the facility-specific emission limit alternative under § 63.3890(c), you must keep records of the data used to calculate the facility-specific emission limit for the initial compliance demonstration. You must also keep records of any data used in each annual predominant activity determination and in the calculation of the facility-specific emission limit for each 12-month compliance period included in the semi-annual compliance reports.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of organic HAP and density for each coating, thinner and/or other additive, and cleaning material, and the volume fraction of coating solids for each coating. If you conducted testing to determine mass fraction of organic HAP, density, or volume fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each compliance period, the records specified in paragraphs (c)(1) through (4) of this section.

(1) A record of the coating operations on which you used each compliance option and the time periods (beginning and ending dates and times) for each option you used.

(2) For the compliant material option, a record of the calculation of the organic HAP content for each coating, using Equation 2 of § 63.3941.

(3) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings, thinners and/or other additives, and cleaning materials used each month using Equations 1, 1A through 1C, and 2 of § 63.3951; and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3951(e)(4); the calculation of the total volume of coating solids used each month using Equation 2 of § 63.3951; and the calculation of each 12-month organic HAP emission rate using Equation 3 of § 63.3951.

(4) For the emission rate with add-on controls option, records of the calculations specified in paragraphs (c)(4)(i) through (v) of this section.

(i) The calculation of the total mass of organic HAP emissions for the coatings, thinners and/or other additives, and cleaning materials used each month using Equations 1 and 1A through 1C of § 63.3951 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3951(e)(4);

(ii) The calculation of the total volume of coating solids used each month using Equation 2 of § 63.3951;

(iii) The calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices using Equations 1 and 1A through 1D of § 63.3961 and

Equations 2, 3, and 3A through 3C of § 63.3961, as applicable;

(iv) The calculation of each month's organic HAP emission rate using Equation 4 of § 63.3961; and

(v) The calculation of each 12-month organic HAP emission rate using Equation 5 of § 63.3961.

(d) A record of the name and volume of each coating, thinner and/or other additive, and cleaning material used during each compliance period. If you are using the compliant material option for all coatings at the source, you may maintain purchase records for each material used rather than a record of the volume used.

(e) A record of the mass fraction of organic HAP for each coating, thinner and/or other additive, and cleaning material used during each compliance period unless the material is tracked by weight.

(f) A record of the volume fraction of coating solids for each coating used during each compliance period.

(g) If you use either the emission rate without add-on controls or the emission rate with add-on controls compliance option, the density for each coating, thinner and/or other additive, and cleaning material used during each compliance period.

(h) If you use an allowance in Equation 1 of § 63.3951 for organic HAP contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.3951(e)(4), you must keep records of the information specified in paragraphs (h)(1) through (3) of this section.

(1) The name and address of each TSDF to which you sent waste materials for which you use an allowance in Equation 1 of § 63.3951; a statement of which subparts under 40 CFR parts 262, 264, 265, and 266 apply to the facility; and the date of each shipment.

(2) Identification of the coating operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 of § 63.3951.

(3) The methodology used in accordance with § 63.3951(e)(4) to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF each month; and the methodology to determine the mass of organic HAP contained in these waste materials. This must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(i) [Reserved]

(j) You must keep records of the date, time, and duration of each deviation.

(k) If you use the emission rate with add-on controls option, you must keep the records specified in paragraphs (k)(1) through (8) of this section.

(1) For each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records required to show continuous compliance with each operating limit specified in Table 1 to this subpart that applies to you.

(4) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent, as specified in § 63.3965(a).

(5) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.3964 and 63.3965(b) through (e), including the records specified in paragraphs (k)(5)(i) through (iii) of this section that apply to you.

(i) *Records for a liquid-to-uncaptured gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH) as measured by Method 204A or 204F of appendix M to 40 CFR part 51 for each material used in the coating operation, and the total TVH for all materials used during each capture efficiency test run, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or 204E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(ii) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or 204C of appendix M to 40 CFR part 51 at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run as measured by Method 204D or 204E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(iii) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.3965(e), if applicable.

(6) The records specified in paragraphs (k)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.3966.

(i) Records of each add-on control device performance test conducted according to §§ 63.3964 and 63.3966.

(ii) Records of the coating operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(7) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.3967 and to document compliance with the operating limits as specified in Table 1 to this subpart.

(8) A record of the work practice plan required by § 63.3893 and documentation that you are implementing the plan on a continuous basis.

§ 63.3931 In what form and for 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). Where appropriate, the records may be maintained as electronic spreadsheets or as a database.

(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 may keep the records off-site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.3940 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements in § 63.3941. The initial compliance period begins on the applicable compliance date specified in § 63.3883 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through that month plus the next 12 months. The initial compliance demonstration includes the calculations according to § 63.3941 and supporting documentation showing that during the initial compliance period, you used no coating with an organic HAP content that exceeded the applicable emission limit in § 63.3890, and that you used no thinners and/or other additives, or cleaning materials that contained organic HAP as determined according to § 63.3941(a).

§ 63.3941 How do I demonstrate initial compliance with the emission limitations?

You may use the compliant material option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the emission rate without add-on controls option or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the compliant material option, the coating operation or group of coating operations must use no coating with an organic HAP content that exceeds the applicable emission limits in § 63.3890 and must use no thinner and/or other additive, or cleaning material that contains organic HAP as determined according to this section. Any coating operation for which you use the compliant material option is not required to meet the operating limits or work practice standards required in §§ 63.3892 and 63.3893, respectively. You must conduct a separate initial compliance demonstration for each general use, high performance, magnet wire, rubber-to-metal, and extreme performance fluoropolymer coating operation unless you are demonstrating compliance with a predominant activity or facility-specific emission limit as provided in § 63.3890(c). If you are demonstrating compliance with a predominant activity or facility-specific emission limit as provided in § 63.3890(c), you must demonstrate that all coating operations included in the predominant activity determination or calculation of the facility-specific emission limit comply with that limit. You must meet all the requirements of this section. Use the procedures in this section on each coating, thinner and/or other additive, and cleaning material in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration. You do not need to redetermine the organic HAP content of coatings, thinners and/or other additives, and cleaning materials that are reclaimed on-site (or reclaimed off-site if you have documentation showing that you received back the exact same materials that were sent off-site) and reused in the coating operation for which you use the compliant material option, provided these materials in their condition as received were demonstrated to comply with the compliant material option.

(a) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each coating, thinner and/or other additive, and cleaning material used during the compliance period by using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.*, 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (*e.g.*, 0.763).

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP. For reactive adhesives in which some of the HAP react to form solids and are not emitted to the atmosphere, you may use the alternative method contained in appendix A to subpart PPPP of this part, rather than Method 24. You may use the volatile fraction that is emitted, as measured by the alternative method in appendix A to subpart PPPP of this part, as a substitute for the mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. For reactive adhesives in which some of the HAP react to form solids and are not emitted to the atmosphere, you may rely on manufacturer's data that expressly states the organic HAP or volatile matter mass fraction emitted. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence unless, after consultation, you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for the mass fraction of organic HAP in these solvent blends listed in Table 3 or 4 to this subpart. If you use the tables, you must use the values in Table 3 for all solvent blends that match Table 3 entries according to the instructions for Table 3, and you may use Table 4 only if the solvent blends in the materials you use do not match any of the solvent blends in Table 3 and you know only whether the blend is aliphatic or aromatic. However, if the

results of a Method 311 (appendix A to 40 CFR part 63) test indicate higher values than those listed on Table 3 or 4 to this subpart, the Method 311 results will take precedence unless, after consultation, you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(b) *Determine the volume fraction of coating solids for each coating.* You must determine the volume fraction of coating solids (liters (gal) of coating solids per liter (gal) of coating) for each coating used during the compliance period by a test, by information provided by the supplier or the manufacturer of the material, or by calculation, as specified in paragraphs (b)(1) through (4) of this section. If test results obtained according to paragraph (b)(1) of this section do not agree with the information obtained under paragraph (b)(3) or (4) of this section, the test results will take precedence unless, after consultation, you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(1) *ASTM Method D2697–86 (Reapproved 1998) or ASTM Method D6093–97 (Reapproved 2003).* You may use ASTM Method D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings'' (incorporated by reference, see § 63.14), or ASTM Method D6093–97 (Reapproved 2003), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer'' (incorporated by reference, see § 63.14), to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

(2) *Alternative method.* You may use an alternative test method for determining the solids content of each coating once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(3) *Information from the supplier or manufacturer of the material.* You may obtain the volume fraction of coating solids for each coating from the supplier or manufacturer.

(4) *Calculation of volume fraction of coating solids.* You may determine the volume fraction of coating solids using Equation 1 of this section:

$$V_s = 1 - \frac{m_{volatiles}}{D_{avg}} \qquad \text{(Eq. 1)}$$

Where:

V_s = Volume fraction of coating solids, liters (gal) coating solids per liter (gal) coating.

$m_{volatiles}$ = Total volatile matter content of the coating, including HAP, volatile organic compounds (VOC), water, and exempt compounds, determined according to Method 24 in appendix A of 40 CFR part 60, grams volatile matter per liter coating.

D_{avg} = Average density of volatile matter in the coating, grams volatile matter per liter volatile matter, determined from test results using ASTM Method D1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, see § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and other information sources, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, see § 63.14), information from the supplier or manufacturer of the material, or specific gravity data for pure chemicals. If there is disagreement between ASTM Method D1475–98 test results and the supplier's or manufacturer's information, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(d) *Determine the organic HAP content of each coating.* Calculate the organic HAP content, kg (lb) of organic HAP emitted per liter (gal) coating solids used, of each coating used during the compliance period using Equation 2 of this section:

$$H_c = \frac{(D_c)(W_c)}{V_s} \qquad \text{(Eq. 2)}$$

Where:

H_c = Organic HAP content of the coating, kg organic HAP emitted per liter (gal) coating solids used.

D_c = Density of coating, kg coating per liter (gal) coating, determined according to paragraph (c) of this section.

W_c = Mass fraction of organic HAP in the coating, kg organic HAP per kg coating, determined according to paragraph (a) of this section.

V_s = Volume fraction of coating solids, liter (gal) coating solids per liter (gal) coating, determined according to paragraph (b) of this section.

(e) *Compliance demonstration.* The calculated organic HAP content for each coating used during the initial compliance period must be less than or equal to the applicable emission limit in § 63.3890; and each thinner and/or other additive, and cleaning material used during the initial compliance period must contain no organic HAP, determined according to paragraph (a) of this section. You must keep all records required by §§ 63.3930 and 63.3931. As part of the notification of compliance status required in § 63.3910, you must identify the coating operation(s) for which you used the compliant material option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no coatings for which the organic HAP content exceeded the applicable emission limit in § 63.3890, and you used no thinners and/or other additives, or cleaning materials that contained organic HAP, determined according to the procedures in paragraph (a) of this section.

§ 63.3942 How do I demonstrate continuous compliance with the emission limitations?

(a) For each compliance period to demonstrate continuous compliance, you must use no coating for which the organic HAP content (determined using Equation 2 of § 63.3941) exceeds the applicable emission limit in § 63.3890, and use no thinner and/or other additive, or cleaning material that contains organic HAP, determined according to § 63.3941(a). A compliance period consists of 12 months. Each month, after the end of the initial compliance period described in § 63.3940, is the end of a compliance period consisting of that month and the preceding 11 months. If you are complying with a facility-specific emission limit under § 63.3890(c), you must also perform the calculation using Equation 1 in § 63.3890(c)(2) on a monthly basis using the data from the previous 12 months of operation.

(b) If you choose to comply with the emission limitations by using the compliant material option, the use of any coating, thinner and/or other

additive, or cleaning material that does not meet the criteria specified in paragraph (a) of this section is a deviation from the emission limitations that must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(5).

(c) As part of each semiannual compliance report required by § 63.3920, you must identify the coating operation(s) for which you used the compliant material option. If there were no deviations from the applicable emission limit in § 63.3890, submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because you used no coatings for which the organic HAP content exceeded the applicable emission limit in § 63.3890, and you used no thinner and/or other additive, or cleaning material that contained organic HAP, determined according to § 63.3941(a).

(d) You must maintain records as specified in §§ 63.3930 and 63.3931.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.3950 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3951. The initial compliance period begins on the applicable compliance date specified in § 63.3883 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate an organic HAP emission rate at the end of the initial compliance period. The initial compliance demonstration includes the calculations according to § 63.3951 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.3890.

§ 63.3951 How do I demonstrate initial compliance with the emission limitations?

You may use the emission rate without add-on controls option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the compliant material option or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the emission rate without add-on controls option, the coating operation or group of coating operations must meet the applicable emission limit in § 63.3890, but is not required to meet the operating limits or work practice standards in §§ 63.3892 and 63.3893, respectively. You must conduct a separate initial compliance demonstration for each general use, magnet wire, rubber-to-metal, and extreme performance fluoropolymer coating operation unless you are demonstrating compliance with a predominant activity or facility-specific emission limit as provided in § 63.3890(c). If you are demonstrating compliance with a predominant activity or facility-specific emission limit as provided in § 63.3890(c), you must demonstrate that all coating operations included in the predominant activity determination or calculation of the facility-specific emission limit comply with that limit. You must meet all the requirements of this section. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners and/or other additives, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate with add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners and/or other additives, or cleaning materials that have been reclaimed on-site (or reclaimed off-site if you have documentation showing that you received back the exact same materials that were sent off-site) and reused in the coating operation for which you use the emission rate without add-on controls option. If you use coatings, thinners and/or other additives, or cleaning materials that have been reclaimed on-site, the amount of each used in a month may be reduced by the amount of each that is reclaimed. That is, the amount used may be calculated as the amount consumed to account for materials that are reclaimed.

(a) *Determine the mass fraction of organic HAP for each material.* Determine the mass fraction of organic HAP for each coating, thinner and/or other additive, and cleaning material used during each month according to the requirements in § 63.3941(a).

(b) *Determine the volume fraction of coating solids.* Determine the volume fraction of coating solids (liter (gal) of coating solids per liter (gal) of coating) for each coating used during each month according to the requirements in § 63.3941(b).

(c) *Determine the density of each material.* Determine the density of each liquid coating, thinner and/or other additive, and cleaning material used during each month from test results using ASTM Method D1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, see § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If you are including powder coatings in the compliance determination, determine the density of powder coatings, using ASTM Method D5965–02, ''Standard Test Methods for Specific Gravity of Coating Powders'' (incorporated by reference, see § 63.14), or information from the supplier. If there is disagreement between ASTM Method D1475–98 or ASTM Method D5965–02 test results and other such information sources, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct. If you purchase materials or monitor consumption by weight instead of volume, you do not need to determine material density. Instead, you may use the material weight in place of the combined terms for density and volume in Equations 1A, 1B, 1C, and 2 of this section.

(d) *Determine the volume of each material used.* Determine the volume (liters) of each coating, thinner and/or other additive, and cleaning material used during each month by measurement or usage records. If you purchase materials or monitor consumption by weight instead of volume, you do not need to determine the volume of each material used. Instead, you may use the material weight in place of the combined terms for density and volume in Equations 1A, 1B, and 1C of this section.

(e) *Calculate the mass of organic HAP emissions.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all coatings, thinners and/or other additives, and cleaning materials used during each month minus the organic HAP in certain waste materials. Calculate the mass of organic HAP emissions using Equation 1 of this section.

$$H_e = A + B + C - R_w \qquad \text{(Eq. 1)}$$

Where:

H_e = Total mass of organic HAP emissions during the month, kg.

A = Total mass of organic HAP in the coatings used during the month, kg, as calculated in Equation 1A of this section.

B = Total mass of organic HAP in the thinners and/or other additives used during the month, kg, as calculated in Equation 1B of this section.

C = Total mass of organic HAP in the cleaning materials used during the month, kg, as calculated in Equation 1C of this section.

R_w = Total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the month, kg, determined according to paragraph (e)(4) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(1) Calculate the kg organic HAP in the coatings used during the month using Equation 1A of this section:

$$A = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A = Total mass of organic HAP in the coatings used during the month, kg.

$Vol_{c,i}$ = Total volume of coating, i, used during the month, liters.

$D_{c,i}$ = Density of coating, i, kg coating per liter coating.

$W_{c,i}$ = Mass fraction of organic HAP in coating, i, kg organic HAP per kg coating. For reactive adhesives as defined in § 63.3981, use the mass fraction of organic HAP that is emitted as determined using the method in appendix A to subpart PPPP of this part.

m = Number of different coatings used during the month.

(2) Calculate the kg of organic HAP in the thinners and/or other additives used during the month using Equation 1B of this section:

$$B = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B = Total mass of organic HAP in the thinners and/or other additives used during the month, kg.

$Vol_{t,j}$ = Total volume of thinner and/or other additive, j, used during the month, liters.

$D_{t,j}$ = Density of thinner and/or other additive, j, kg per liter.

$W_{t,j}$ = Mass fraction of organic HAP in thinner and/or other additive, j, kg organic HAP per kg thinner and/or other additive. For reactive adhesives as defined in § 63.3981, use the mass fraction of organic HAP that is emitted as determined using the method in appendix A to subpart PPPP of this part.

n = Number of different thinners and/or other additives used during the month.

(3) Calculate the kg organic HAP in the cleaning materials used during the month using Equation 1C of this section:

$$C = \sum_{k=1}^{p} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 1C)}$$

Where:

C = Total mass of organic HAP in the cleaning materials used during the month, kg.

$Vol_{s,k}$ = Total volume of cleaning material, k, used during the month, liters.

$D_{s,k}$ = Density of cleaning material, k, kg per liter.

$W_{s,k}$ = Mass fraction of organic HAP in cleaning material, k, kg organic HAP per kg material.

p = Number of different cleaning materials used during the month.

(4) If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in Equation 1 of this section, then you must determine the mass according to paragraphs (e)(4)(i) through (iv) of this section.

(i) You may only include waste materials in the determination that are generated by coating operations in the affected source for which you use Equation 1 of this section and that will be treated or disposed of by a facility that is regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include organic HAP contained in wastewater.

(ii) You must determine either the amount of the waste materials sent to a TSDF during the month or the amount collected and stored during the month and designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a month if you have already included them in the amount collected and stored during that month or a previous month.

(iii) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (e)(4)(ii) of this section.

(iv) You must document the methodology you use to determine the amount of waste materials and the total mass of organic HAP they contain, as required in § 63.3930(h). If waste manifests include this information, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(f) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used, liters, which is the combined volume of coating solids for all the coatings used during each month, using Equation 2 of this section:

$$V_{st} = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(V_{s,i}\right) \qquad \text{(Eq. 2)}$$

Where:

V_{st} = Total volume of coating solids used during the month, liters.

$Vol_{c,i}$ = Total volume of coating, i, used during the month, liters.

$V_{s,i}$ = Volume fraction of coating solids for coating, i, liter solids per liter coating, determined according to § 63.3941(b).

m = Number of coatings used during the month.

(g) *Calculate the organic HAP emission rate.* Calculate the organic HAP emission rate for the compliance period, kg (lb) organic HAP emitted per liter (gal) coating solids used, using Equation 3 of this section:

$$H_{yr} = \frac{\sum_{y=1}^{n} H_e}{\sum_{y=1}^{n} V_{st}} \qquad \text{(Eq. 3)}$$

Where:

H_{yr} = Average organic HAP emission rate for the compliance period, kg organic HAP emitted per liter coating solids used.

H_e = Total mass of organic HAP emissions from all materials used during month, y, kg, as calculated by Equation 1 of this section.

V_{st} = Total volume of coating solids used during month, y, liters, as calculated by Equation 2 of this section.

y = Identifier for months.

n = Number of full or partial months in the compliance period (for the initial compliance period, n equals 12 if the compliance date falls on the first day of a month; otherwise n equals 13; for all following compliance periods, n equals 12).

(h) *Compliance demonstration.* The organic HAP emission rate for the initial compliance period calculated using Equation 3 of this section must be less than or equal to the applicable emission limit for each subcategory in § 63.3890 or the predominant activity or facility-specific emission limit allowed in

§ 63.3890(c). You must keep all records as required by §§ 63.3930 and 63.3931. As part of the notification of compliance status required by § 63.3910, you must identify the coating operation(s) for which you used the emission rate without add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3890, determined according to the procedures in this section.

§ 63.3952 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the organic HAP emission rate for each compliance period, determined according to § 63.3951(a) through (g), must be less than or equal to the applicable emission limit in § 63.3890. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3950 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.3951(a) through (g) on a monthly basis using data from the previous 12 months of operation. If you are complying with a facility-specific emission limit under § 63.3890(c), you must also perform the calculation using Equation 1 in § 63.3890(c)(2) on a monthly basis using the data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.3890, this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(6).

(c) As part of each semiannual compliance report required by § 63.3920, you must identify the coating operation(s) for which you used the emission rate without add-on controls option. If there were no deviations from the emission limitations, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3890, determined according to § 63.3951(a) through (g).

(d) You must maintain records as specified in §§ 63.3930 and 63.3931.

Compliance Requirements for the Emission Rate With Add-On Controls Option

§ 63.3960 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3883. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j), you must conduct a performance test of each capture system and add-on control device according to §§ 63.3964, 63.3965, and 63.3966 and establish the operating limits required by § 63.3892 no later than 180 days after the applicable compliance date specified in § 63.3883. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3961(j), you must initiate the first material balance no later than the applicable compliance date specified in § 63.3883. For magnet wire coating operations you may, with approval, conduct a performance test of one representative magnet wire coating machine for each group of identical or very similar magnet wire coating machines.

(2) You must develop and begin implementing the work practice plan required by § 63.3893 no later than the compliance date specified in § 63.3883.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3961. The initial compliance period begins on the applicable compliance date specified in § 63.3883 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coatings solids used each month and then calculate an organic HAP emission rate at the end of the initial compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3964, 63.3965, and 63.3966; results of liquid-liquid material balances conducted according to § 63.3961(j); calculations according to § 63.3961 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.3890; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3968; and documentation of whether you developed and implemented the work practice plan required by § 63.3893.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3892 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section. For magnet wire coating operations, you must begin complying with the operating limits for all identical or very similar magnet wire coating machines on the date you complete the performance test of a representative magnet wire coating machine. The requirements in this paragraph (a)(4) do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.3961(j).

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3883. Except for magnet wire coating operations and solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.3964, 63.3965, and 63.3966 and establish the operating limits required by § 63.3892 no later than the compliance date specified in § 63.3883. For magnet wire coating operations, you may, with approval, conduct a performance test of a single magnet wire coating machine that represents identical or very similar magnet wire coating machines. For a solvent recovery system for which you

conduct liquid-liquid material balances according to § 63.3961(j), you must initiate the first material balance no later than the compliance date specified in § 63.3883.

(2) You must develop and begin implementing the work practice plan required by § 63.3893 no later than the compliance date specified in § 63.3883.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3961. The initial compliance period begins on the applicable compliance date specified in § 63.3883 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coatings solids used each month and then calculate an organic HAP emission rate at the end of the initial compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3964, 63.3965, and 63.3966; results of liquid-liquid material balances conducted according to § 63.3961(j); calculations according to § 63.3961 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.3890; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3968; and documentation of whether you developed and implemented the work practice plan required by § 63.3893.

(c) You are not required to conduct an initial performance test to determine capture efficiency or destruction efficiency of a capture system or control device if you receive approval to use the results of a performance test that has been previously conducted on that capture system or control device. Any such previous tests must meet the conditions described in paragraphs (c)(1) through (3) of this section.

(1) The previous test must have been conducted using the methods and conditions specified in this subpart.

(2) Either no process or equipment changes have been made since the previous test was performed or the owner or operator must be able to demonstrate that the results of the performance test, reliably demonstrate compliance despite process or equipment changes.

(3) Either the required operating parameters were established in the previous test or sufficient data were collected in the previous test to establish the required operating parameters.

§ 63.3961 How do I demonstrate initial compliance?

(a) You may use the emission rate with add-on controls option for any coating operation, for any group of coating operations in the affected source, or for all of the coating operations in the affected source. You may include both controlled and uncontrolled coating operations in a group for which you use this option. You must use either the compliant material option or the emission rate without add-on controls option for any coating operation in the affected source for which you do not use the emission rate with add-on controls option. To demonstrate initial compliance, the coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable emission limitations in §§ 63.3890, 63.3892, and 63.3893. You must conduct a separate initial compliance demonstration for each general use, magnet wire, rubber-to-metal, and extreme performance fluoropolymer coating operation, unless you are demonstrating compliance with a predominant activity or facility-specific emission limit as provided in § 63.3890(c). If you are demonstrating compliance with a predominant activity or facility-specific emission limit as provided in § 63.4490(c), you must demonstrate that all coating operations included in the predominant activity determination or calculation of the facility-specific emission limit comply with that limit. You must meet all the requirements of this section. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners and/or other additives, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate without add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners and/or other additives, or cleaning materials that have been reclaimed onsite (or reclaimed off-site if you have documentation showing that you received back the exact same materials that were sent off-site) and reused in the coatings operation(s) for which you use the emission rate with add-on controls option. If you use coatings, thinners and/or other additives, or cleaning materials that have been reclaimed on-site, the amount of each used in a month may be reduced by the amount of each that is reclaimed. That is, the amount used may be calculated as the amount consumed to account for materials that are reclaimed.

(b) *Compliance with operating limits.* Except as provided in § 63.3960(a)(4), and except for solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of paragraph (j) of this section, you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3892, using the procedures specified in §§ 63.3967 and 63.3968.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.3893 during the initial compliance period, as specified in § 63.3930.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (n) of this section to demonstrate compliance with the applicable emission limit in § 63.3890 for each affected source in each subcategory.

(e) *Determine the mass fraction of organic HAP, density, volume used, and volume fraction of coating solids.* Follow the procedures specified in § 63.3951(a) through (d) to determine the mass fraction of organic HAP, density, and volume of each coating, thinner and/or other additive, and cleaning material used during each month; and the volume fraction of coating solids for each coating used during each month.

(f) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.3951, calculate the total mass of organic HAP emissions before add-on controls from all coatings, thinners and/or other additives, and cleaning materials used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option.

(g) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during each month. The emission reduction determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (h) of this

section to calculate the mass of organic HAP emission reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (j) of this section to calculate the organic HAP emission reduction.

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balance.* Use Equation 1 of this section to calculate the organic HAP emission reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings, thinners and/or other additives, and cleaning materials that are used in the coating operation served by the emission capture system and add-on control device during each month. You must assume zero efficiency for the emission capture system and add-on control device for any period of time a deviation specified in § 63.3963(c) or (d) occurs in the controlled coating operation, including a deviation during a period of startup, shutdown, or malfunction, unless you have other data indicating the actual efficiency of the emission capture system and add-on control device and the use of these data is approved by the Administrator. Equation 1 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation.

$$H_C = \left(A_C + B_C + C_C - R_W - H_{UNC}\right)\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \qquad \text{(Eq. 1)}$$

Where:

H_C = Mass of organic HAP emission reduction for the controlled coating operation during the month, kg.

A_C = Total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg, as calculated in Equation 1A of this section.

B_C = Total mass of organic HAP in the thinners and/or other additives used in the controlled coating operation during the month, kg, as calculated in Equation 1B of this section.

C_C = Total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg, as calculated in Equation 1C of this section.

R_W = Total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the compliance period, kg, determined according to § 63.3951(e)(4). (You may assign a value of zero to R_W if you do not wish to use this allowance.)

H_{UNC} = Total mass of organic HAP in the coatings, thinners and/or other additives, and cleaning materials used during all deviations specified in § 63.3963(c) and (d) that occurred during the month in the controlled coating operation, kg, as calculated in Equation 1D of this section.

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.3964 and 63.3965 to measure and record capture efficiency.

DRE = Organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.3964 and 63.3966 to measure and record the organic HAP destruction or removal efficiency.

(1) Calculate the mass of organic HAP in the coatings used in the controlled coating operation, kg (lb), using Equation 1A of this section:

$$A_C = \sum_{i=1}^{m}\left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A_C = Total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg.

$Vol_{c,i}$ = Total volume of coating, i, used during the month, liters.

$D_{c,i}$ = Density of coating, i, kg per liter.

$W_{c,i}$ = Mass fraction of organic HAP in coating, i, kg per kg. For reactive adhesives as defined in § 63.3981, use the mass fraction of organic HAP that is emitted as determined using the method in appendix A to subpart PPPP of this part.

m = Number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners and/or other additives used in the controlled coating operation, kg (lb), using Equation 1B of this section:

$$B_C = \sum_{j=1}^{n}\left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B_C = Total mass of organic HAP in the thinners and/or other additives used in the controlled coating operation during the month, kg.

$Vol_{t,j}$ = Total volume of thinner and/or other additive, j, used during the month, liters.

$D_{t,j}$ = Density of thinner and/or other additive, j, kg per liter.

$W_{t,j}$ = Mass fraction of organic HAP in thinner and/or other additive, j, kg per kg. For reactive adhesives as defined in § 63.3981, use the mass fraction of organic HAP that is

emitted as determined using the method in appendix A to subpart PPPP of this part.

n = Number of different thinners and/or other additives used.

(3) Calculate the mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg (lb), using Equation 1C of this section:

$$C_C = \sum_{k=1}^{p} (Vol_{s,k})(D_{s,k})(W_{s,k}) \qquad \text{(Eq. 1C)}$$

Where:

C_C = Total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg.

$Vol_{s,k}$ = Total volume of cleaning material, k, used during the month, liters.

$D_{s,k}$ = Density of cleaning material, k, kg per liter.

$W_{s,k}$ = Mass fraction of organic HAP in cleaning material, k, kg per kg.

p = Number of different cleaning materials used.

(4) Calculate the mass of organic HAP in the coatings, thinners and/or other additives, and cleaning materials used in the controlled coating operation during deviations specified in § 63.3963(c) and (d), using Equation 1D of this section:

$$H_{UNC} = \sum_{h=1}^{q} (Vol_h)(D_h)(W_h) \qquad \text{(Eq. 1D)}$$

Where:

H_{UNC} = Total mass of organic HAP in the coatings, thinners and/or other additives, and cleaning materials used during all deviations specified in § 63.3963(c) and (d) that occurred during the month in the controlled coating operation, kg.

Vol_h = Total volume of coating, thinner and/or other additive, or cleaning material, h, used in the controlled coating operation during deviations, liters.

D_h = Density of coating, thinner and/or other additives, or cleaning material, h, kg per liter.

W_h = Mass fraction of organic HAP in coating, thinner and/or other additives, or cleaning material, h, kg organic HAP per kg coating. For reactive adhesives as defined in § 63.3981, use the mass fraction of organic HAP that is emitted as determined using the method in appendix A to subpart PPPP of this part.

q = Number of different coatings, thinners and/or other additives, and cleaning materials used.

(i) [Reserved]

(j) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings, thinners and/or other additives, and cleaning materials that are used in the coating operation controlled by the solvent recovery system during each month. Perform a liquid-liquid material balance for each month as specified in paragraphs (j)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (j)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each month. The device must be initially certified by the manufacturer to be accurate to within ± 2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the month, based on measurement with the device required in paragraph (j)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating, thinner and/or other additive, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(4) Determine the density of each coating, thinner and/or other additive, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, kg per liter, according to § 63.3951(c).

(5) Measure the volume of each coating, thinner and/or other additive, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, liters.

(6) Each month, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency, using Equation 2 of this section:

$$R_V = 100 \frac{M_{VR}}{\sum_{i=1}^{m} Vol_i D_i WV_{c,i} + \sum_{j=1}^{n} Vol_j D_j WV_{t,j} + \sum_{k=1}^{p} Vol_k D_k WV_{s,k}} \quad \text{(Eq. 2)}$$

Where:

R_V = Volatile organic matter collection and recovery efficiency of the solvent recovery system during the month, percent.

M_{VR} = Mass of volatile organic matter recovered by the solvent recovery system during the month, kg.

Vol_i = Volume of coating, i, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_i = Density of coating, i, kg per liter.

$WV_{c,i}$ = Mass fraction of volatile organic matter for coating, i, kg volatile organic matter per kg coating. For reactive adhesives as defined in § 63.3981, use the mass fraction of organic HAP that is emitted as determined using the method in appendix A to subpart PPPP of this part.

Vol_j = Volume of thinner and/or other additive, j, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_j = Density of thinner and/or other additive, j, kg per liter.

$WV_{t,j}$ = Mass fraction of volatile organic matter for thinner and/or other additive, j, kg volatile organic matter per kg thinner and/or other additive. For reactive adhesives as defined in § 63.3981, use the mass fraction of organic HAP that is emitted as determined using the method in appendix A to subpart PPPP of this part.

Vol_k = Volume of cleaning material, k, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_k = Density of cleaning material, k, kg per liter.

$WV_{s,k}$ = Mass fraction of volatile organic matter for cleaning material, k, kg volatile organic matter per kg cleaning material.

m = Number of different coatings used in the coating operation controlled by the solvent recovery system during the month.

n = Number of different thinners and/or other additives used in the coating operation controlled by the solvent recovery system during the month.

p = Number of different cleaning materials used in the coating operation controlled by the solvent recovery system during the month.

(7) Calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month, using Equation 3 of this section and according to paragraphs (j)(7)(i) through (iii) of this section:

$$H_{CSR} = \left(A_{CSR} + B_{CSR} + C_{CSR}\right)\left(\frac{R_V}{100}\right) \quad \text{(Eq. 3)}$$

Where:

H_{CSR} = Mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the month, kg.

A_{CSR} = Total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3A of this section.

B_{CSR} = Total mass of organic HAP in the thinners and/or other additives used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3B of this section.

C_{CSR} = Total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3C of this section.

R_V = Volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 2 of this section.

(i) Calculate the mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, using Equation 3A of this section.

$$A_{CSR} = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \quad \text{(Eq. 3A)}$$

Where:

A_{CSR} = Total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{c,i}$ = Total volume of coating, i, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{c,i}$ = Density of coating, i, kg per liter.

$W_{c,i}$ = Mass fraction of organic HAP in coating, i, kg organic HAP per kg coating. For reactive adhesives as defined in § 63.3981, use the mass fraction of organic HAP that is emitted as determined using the method in appendix A to subpart PPPP of this part.

m = Number of different coatings used.

(ii) Calculate the mass of organic HAP in the thinners and/or other additives used in the coating operation controlled by the solvent recovery system, kg, using Equation 3B of this section:

$$B_{CSR} = \sum_{j-1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \quad \text{(Eq. 3B)}$$

Where:

B_{CSR} = Total mass of organic HAP in the thinners and/or other additives used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{t,j}$ = Total volume of thinner and/or other additive, j, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{t,j}$ = Density of thinner and/or other additive, j, kg per liter.

$W_{t,j}$ = Mass fraction of organic HAP in thinner and/or other additive, j, kg lb organic HAP per kg thinner and/or other additive. For reactive adhesives as defined in § 63.3981, use the mass fraction of organic HAP that is emitted as determined using the method in appendix A to subpart PPPP of this part.

n = Number of different thinners and/or other additives used.

(iii) Calculate the mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, kg, using Equation 3C of this section:

$$C_{CSR} = \sum_{k=1}^{p} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 3C)}$$

Where:

C_{CSR} = Total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{s,k}$ = Total volume of cleaning material, k, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{s,k}$ = Density of cleaning material, k, kg per liter.

$W_{s,k}$ = Mass fraction of organic HAP in cleaning material, k, kg organic HAP per kg cleaning material.

p = Number of different cleaning materials used.

(k) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used, liters, which is the combined volume of coating solids for all the coatings used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option, using Equation 2 of § 63.3951.

(l) *Calculate the mass of organic HAP emissions for each month.* Determine the mass of organic HAP emissions, kg, during each month, using Equation 4 of this section:

$$H_{HAP} = H_e - \sum_{i=1}^{q}\left(H_{c,i}\right) - \sum_{j=1}^{r}\left(H_{CSR,j}\right) \qquad \text{(Eq. 4)}$$

where:

H_{HAP} = Total mass of organic HAP emissions for the month, kg.

H_e = Total mass of organic HAP emissions before add-on controls from all the coatings, thinners and/or other additives, and cleaning materials used during the month, kg, determined according to paragraph (f) of this section.

$H_{C,i}$ = Total mass of organic HAP emission reduction for controlled coating operation, i, not using a liquid-liquid material balance, during the month, kg, from Equation 1 of this section.

$H_{CSR,j}$ = Total mass of organic HAP emission reduction for coating operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the month, kg, from Equation 3 of this section.

q = Number of controlled coating operations not controlled by a solvent recovery system using a liquid-liquid material balance.

r = Number of coating operations controlled by a solvent recovery system using a liquid-liquid material balance.

(m) *Calculate the organic HAP emission rate for the compliance period.* Determine the organic HAP emission rate for the compliance period, kg (lb) of organic HAP emitted per liter (gal) coating solids used, using Equation 5 of this section:

$$H_{annual} = \frac{\sum_{y=1}^{n} H_{HAP,y}}{\sum_{y=1}^{n} V_{st,y}} \qquad \text{(Eq. 5)}$$

Where:

H_{annual} = Organic HAP emission rate for the compliance period, kg organic HAP emitted per liter coating solids used.

$H_{HAP,y}$ = Organic HAP emissions for month, y, kg, determined according to Equation 4 of this section.

$V_{st,y}$ = Total volume of coating solids used during month, y, liters, from Equation 2 of § 63.3951.

y = Identifier for months.

n = Number of full or partial months in the compliance period (for the initial compliance period, n equals 12 if the compliance date falls on the first day of a month; otherwise n equals 13; for all following compliance periods, n equals 12).

(n) *Compliance demonstration.* The organic HAP emission rate for the initial compliance period, calculated using Equation 5 of this section, must be less than or equal to the applicable emission limit for each subcategory in § 63.3890 or the predominant activity or facility-specific emission limit allowed in § 63.3890(c). You must keep all records as required by §§ 63.3930 and 63.3931. As part of the notification of compliance status required by § 63.3910, you must identify the coating operation(s) for which you used the emission rate with add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3890, and you achieved the operating limits required by § 63.3892 and the work practice standards required by § 63.3893.

§ 63.3962 [Reserved.]

§ 63.3963 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.3890, the organic HAP emission rate for each compliance period, determined according to the

procedures in § 63.3961, must be equal to or less than the applicable emission limit in § 63.3890. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3960 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.3961 on a monthly basis using data from the previous 12 months of operation. If you are complying with a facility-specific emission limit under § 63.3890(c), you must also perform the calculation using Equation 1 in § 63.3890(c)(2) on a monthly basis using the data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.3890, this is a deviation from the emission limitation for that compliance period that must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(7).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.3892 that applies to you, as specified in Table 1 to this subpart, when the coating line is in operation.

(1) If an operating parameter is out of the allowed range specified in Table 1 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(7).

(2) If an operating parameter deviates from the operating limit specified in Table 1 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation, unless you have other data indicating the actual efficiency of the emission capture system and add-on control device and the use of these data is approved by the Administrator.

(d) You must meet the requirements for bypass lines in § 63.3968(b) for controlled coating operations for which you do not conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(7). For the purposes of completing the compliance calculations specified in §§ 63.3961(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.3961.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.3893. If you did not develop a work practice plan, or you did not implement the plan, or you did not keep the records required by § 63.3930(k)(8), this is a deviation from the work practice standards that must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(7).

(f) As part of each semiannual compliance report required in § 63.3920, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limitations, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3890, and you achieved the operating limits required by § 63.3892 and the work practice standards required by § 63.3893 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the startup, shutdown, and malfunction plan required by § 63.3900(c).

(h) [Reserved]

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.3930 and 63.3931.

§ 63.3964 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.3960 according to the requirements in § 63.7(e)(1) and under the conditions in this section, unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.3965. You must conduct each performance test of an add-on control device according to the requirements in § 63.3966.

§ 63.3965 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.3960.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings, thinners and/or other additives, and cleaning materials used in the coating operation are applied within the capture system; coating solvent flash-off, curing, and drying occurs within the capture system; and the removal or evaporation of cleaning materials from the surfaces they are applied to occurs within the capture system. For example, this criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the three protocols described in paragraphs (c), (d), and (e) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of the production, which includes

surface preparation activities and drying and curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation to the mass of TVH emissions not captured by the emission capture system. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners and/or other additives, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or 204F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating, thinner and/or other additive, and cleaning material used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term VOC in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings, thinners and/or other additives, and cleaning materials used in the coating operation during each capture efficiency test run:

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \qquad \text{(Eq. 1)}$$

Where:

TVH_{used} = Mass of liquid TVH in materials used in the coating operation during the capture efficiency test run, kg.

TVH_i = Mass fraction of TVH in coating, thinner and/or other additive, or cleaning material, i, that is used in the coating operation during the capture efficiency test run, kg TVH per kg material.

Vol_i = Total volume of coating, thinner and/or other additive, or cleaning material, i, used in the coating operation during the capture efficiency test run, liters.

D_i = Density of coating, thinner and/or other additive, or cleaning material, i, kg material per liter material.

n = Number of different coatings, thinners and/or other additives, and cleaning materials used in the coating operation during the capture efficiency test run.

(4) Use Method 204D or 204E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system. They are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D of appendix M to 40 CFR part 51 if the enclosure is a temporary total enclosure.

(ii) Use Method 204E of appendix M to 40 CFR 51 if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 2 of this section:

$$CE = \frac{(TVH_{used} - TVH_{uncaptured})}{TVH_{used}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = Total mass of TVH liquid input used in the coating operation during the capture efficiency test run, kg.

$TVH_{uncaptured}$ = Total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners and/or other additives, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device, such as the entrance and exit areas of an oven or a spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or 204C of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions captured by the emission

capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or 204C measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or 204E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D of appendix M to 40 CFR part 51 if the enclosure is a temporary total enclosure.

(ii) Use Method 204E of appendix M to 40 CFR part 51 if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 3 of this section:

$$CE = \frac{TVH_{captured}}{\left(TVH_{captured} + TVH_{uncaptured}\right)} \times 100 \qquad \text{(Eq. 3)}$$

Where:

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = Total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, kg.

$TVH_{uncaptured}$ = Total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Alternative capture efficiency protocol.* As an alternative to the procedures specified in paragraphs (c) and (d) of this section and subject to the approval of the Administrator, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

§ 63.3966 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3960. You must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour. If the source is a magnet wire coating machine, you may use the procedures in section 3.0 of appendix A to this subpart as an alternative.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight.

(4) Use Method 4 of appendix A to 40 CFR part 60, to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60.

(1) Use Method 25 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use Method 25A if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A if the add-on control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet to the atmosphere of each device. For example, if one add-on control device is a concentrator with an outlet to the atmosphere for the high-volume dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet to the atmosphere for the low-volume concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions:

$$M_f = Q_{sd} C_c (12)\ (0.0416)\ \left(10^{-6}\right) \qquad \text{(Eq. 1)}$$

Where:

M_f = Total gaseous organic emissions mass flow rate, kg per hour (h).

C_c = Concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, parts per million by volume (ppmv), dry basis.

Q_{sd} = Volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = Conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section:

$$DRE = \frac{M_{fi} - M_{fo}}{M_{fi}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

DRE = Organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = Total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = Total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.3967 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.3960 and described in §§ 63.3964, 63.3965, and 63.3966, you must establish the operating limits required by § 63.3892 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3892.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section. If the source is a magnet wire coating machine, you may use the procedures in section 3.0 of appendix A to this subpart as an alternative.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) You must monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e.*, conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures. If problems are found during the catalyst activity test, you must replace the catalyst bed or take other corrective action consistent with the manufacturer's recommendations.

(ii) Monthly external inspection of the catalytic oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found during the annual internal inspection of the catalyst, you must replace the catalyst bed or take other corrective action consistent with the manufacturer's recommendations. If the catalyst bed is replaced and is not of like or better kind and quality as the old catalyst then you must conduct a new performance test to determine destruction efficiency according to § 63.3966. If a catalyst bed is replaced and the replacement catalyst is of like or better kind and quality as the old catalyst, then a new performance test to determine destruction efficiency is not required and you may continue to use the previously established operating limits for that catalytic oxidizer.

(c) *Regenerative carbon adsorbers.* If your add-on control device is a regenerative carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your regenerative carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the minimum operating limit for the dilute stream across the concentrator.

(f) *Emission capture systems.* For each capture device that is not part of a PTE that meets the criteria of § 63.3965(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 1 to this subpart. If the source is a magnet wire coating machine, you may use the procedures in section 2.0 of appendix A to this subpart as an alternative.

(1) During the capture efficiency determination required by § 63.3960 and described in §§ 63.3964 and 63.3965, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.3968 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (v) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position, and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (nondiverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the coating operation.

(v) *Flow direction indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow direction indicator that takes a reading at least once every

15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. Each time the flow direction changes, the next reading of the time of occurrence and flow direction must be recorded. The flow direction indicator must be installed in each bypass line or air makeup supply line that could divert the emissions away from the add-on control device to the atmosphere.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.3920.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (c)(1) through (3) of this section:

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install gas temperature monitors upstream and/or downstream of the catalyst bed as required in § 63.3967(b).

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (v) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 5 degrees Fahrenheit or 1.0 percent of the temperature value, whichever is larger.

(iii) Before using the sensor for the first time or when relocating or replacing the sensor, perform a validation check by comparing the sensor output to a calibrated temperature measurement device or by comparing the sensor output to a simulated temperature.

(iv) Conduct an accuracy audit every quarter and after every deviation. Accuracy audit methods include comparisons of sensor output to redundant temperature sensors, to calibrated temperature measurement devices, or to temperature simulation devices.

(v) Conduct a visual inspection of each sensor every quarter if redundant temperature sensors are not used.

(d) *Regenerative carbon adsorbers.* If you are using a regenerative carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) through (3) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(3) For all regenerative carbon adsorbers, you must meet the requirements in paragraphs (c)(3)(i) through (v) of this section for each temperature monitoring device.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(2) For all condensers, you must meet the requirements in paragraphs (c)(3)(i) through (v) of this section for each temperature monitoring device.

(f) *Concentrators.* If you are using a concentrator, such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraphs (a) and (g)(2) of this section.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section. If the source is a magnet wire coating machine, you may use the procedures in section 2.0 of appendix A to this subpart as an alternative.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a) and (g)(1)(i) through (vii) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Use a flow sensor with an accuracy of at least 10 percent of the flow.

(iii) Perform an initial sensor calibration in accordance with the manufacturer's requirements.

(iv) Perform a validation check before initial use or upon relocation or replacement of a sensor. Validation checks include comparison of sensor values with electronic signal simulations or via relative accuracy testing.

(v) Conduct an accuracy audit every quarter and after every deviation. Accuracy audit methods include comparisons of sensor values with electronic signal simulations or via relative accuracy testing.

(vi) Perform leak checks monthly.

(vii) Perform visual inspections of the sensor system quarterly if there is no redundant sensor.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a) and (g)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Use a pressure sensor with an accuracy of at least 0.5 inches of water column or 5 percent of the measured value, whichever is larger.

(iii) Perform an initial calibration of the sensor according to the manufacturer's requirements.

(iv) Conduct a validation check before initial operation or upon relocation or replacement of a sensor. Validation checks include comparison of sensor values to calibrated pressure measurement devices or to pressure simulation using calibrated pressure sources.

(v) Conduct accuracy audits every quarter and after every deviation. Accuracy audits include comparison of sensor values to calibrated pressure measurement devices or to pressure simulation using calibrated pressure sources.

(vi) Perform monthly leak checks on pressure connections. A pressure of at least 1.0 inches of water column to the connection must yield a stable sensor result for at least 15 seconds.

(vii) Perform a visual inspection of the sensor at least monthly if there is no redundant sensor.

Other Requirements and Information

§ 63.3980 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (EPA), or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of 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 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 listed in paragraphs (c)(1) through (4) of this section:

(1) Approval of alternatives to the requirements in § 63.3881 through 3883 and § 63.3890 through 3893.

(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.

§ 63.3981 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, and in this section as follows:

Additive means a material that is added to a coating after purchase from a supplier (*e.g.*, catalysts, activators, accelerators).

Add-on control means an air pollution control device, such as a thermal oxidizer or carbon adsorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Adhesive, adhesive coating means any chemical substance that is applied for the purpose of bonding two surfaces together. Products used on humans and animals, adhesive tape, contact paper, or any other product with an adhesive incorporated onto or in an inert substrate shall not be considered adhesives under this subpart.

Assembled on-road vehicle coating means any coating operation in which coating is applied to the surface of some component or surface of a fully assembled motor vehicle or trailer intended for on-road use including, but not limited to, components or surfaces on automobiles and light-duty trucks that have been repaired after a collision or otherwise repainted, fleet delivery trucks, and motor homes and other recreational vehicles (including camping trailers and fifth wheels). Assembled on-road vehicle coating includes the concurrent coating of parts of the assembled on-road vehicle that are painted off-vehicle to protect systems, equipment, or to allow full coverage. Assembled on-road vehicle coating does not include surface coating operations that meet the applicability criteria of the automobiles and light-duty trucks NESHAP. Assembled on-road vehicle coating also does not include the use of adhesives, sealants, and caulks used in assembling on-road vehicles.

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.

Capture efficiency or capture system efficiency means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings or cleaning materials, both at the point of application and at subsequent points where emissions from the coatings and cleaning materials occur, such as flashoff, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

Cleaning material means a solvent used to remove contaminants and other materials, such as dirt, grease, oil, and dried or wet coating (*e.g.*, depainting or paint stripping), from a substrate before or after coating application or from equipment associated with a coating operation, such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, liquid plastic coatings, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances, or paper film or plastic film which may be pre-coated with an adhesive by the film manufacturer, are not considered coatings for the purposes of this subpart. A liquid plastic coating means a coating made from fine particle-size polyvinyl chloride (PVC) in solution (also referred to as a plastisol).

Coating operation means equipment used to apply cleaning materials to a substrate to prepare it for coating application (surface preparation) or to remove dried coating; to apply coating to a substrate (coating application) and to dry or cure the coating after application; or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment, but always includes at least the point at which a given quantity of coating or cleaning material is applied to a given part and all subsequent points in the affected source where organic HAP are emitted from the specific quantity of coating or cleaning material on the specific part. There may be multiple coating operations in an affected source. Coating application with handheld, non-refillable aerosol containers, touch-up markers, or marking pens is not a coating operation for the purposes of this subpart.

Coatings solids means the nonvolatile portion of the coating that makes up the dry film.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of coating operation, or capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

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 limit or operating limit or work practice standard;

(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 limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or

malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means the aggregate of all requirements associated with a compliance option including emission limit, operating limit, work practice standard, etc.

Enclosure means a structure that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

Exempt compound means a specific compound that is not considered a VOC due to negligible photochemical reactivity. The exempt compounds are listed in 40 CFR 51.100(s).

Extreme performance fluoropolymer coating means coatings that are formulated systems based on fluoropolymer resins which often contain bonding matrix polymers dissolved in non-aqueous solvents as well as other ingredients. Extreme performance fluoropolymer coatings are typically used when one or more critical performance criteria are required including, but not limited to a nonstick low-energy surface, dry film lubrication, high resistance to chemical attack, extremely wide operating temperature, high electrical insulating properties, or that the surface comply with government (*e.g.*, USDA, FDA) or third party specifications for health, safety, reliability, or performance. Once applied to a substrate, extreme performance fluoropolymer coatings undergo a curing process that typically requires high temperatures, a chemical reaction, or other specialized technology.

Facility maintenance means the routine repair or renovation (including the surface coating) of the tools, equipment, machinery, and structures that comprise the infrastructure of the affected facility and that are necessary for the facility to function in its intended capacity.

General use coating means any material that meets the definition of coating but does not meet the definition of high performance coating, rubber-to-metal coating, magnet wire coating, or extreme performance fluoropolymer coating as defined in this section.

High performance architectural coating means any coating applied to architectural subsections which is required to meet the specifications of Architectural Aluminum Manufacturer's Association's publication number AAMA 605.2–2000.

High performance coating means any coating that meets the definition of high performance architectural coating or high temperature coating in this section.

High temperature coating means any coating applied to a substrate which during normal use must withstand temperatures of at least 538 degrees Celsius (1000 degrees Fahrenheit).

Hobby shop means any surface coating operation, located at an affected source, that is used exclusively for personal, noncommercial purposes by the affected source's employees or assigned personnel.

Magnet wire coatings, commonly referred to as magnet wire enamels, are applied to a continuous strand of wire which will be used to make turns (windings) in electrical devices such as coils, transformers, or motors. Magnet wire coatings provide high dielectric strength and turn-to-turn conductor insulation. This allows the turns of an electrical device to be placed in close proximity to one another which leads to increased coil effectiveness and electrical efficiency.

Magnet wire coating machine means equipment which applies and cures magnet wire coatings.

Manufacturer's formulation data means data on a material (such as a coating) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in § 63.3941. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as kg of organic HAP per kg of material.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Non-HAP coating means, for the purposes of this subpart, a coating that contains no more than 0.1 percent by mass of any individual organic HAP that is an OSHA-defined carcinogen as specified in 29 CFR 1910.1200(d)(4) and no more than 1.0 percent by mass for any other individual HAP.

Organic HAP content means the mass of organic HAP emitted per volume of coating solids used for a coating calculated using Equation 2 of § 63.3941. The organic HAP content is determined for the coating in the condition it is in when received from its manufacturer or supplier and does not account for any alteration after receipt. For reactive adhesives in which some of the HAP react to form solids and are not emitted to the atmosphere, organic HAP content is the mass of organic HAP that is emitted, rather than the organic HAP content of the coating as it is received.

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51, for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Personal watercraft means a vessel (boat) which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person or persons sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

Protective oil means an organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils. Protective oils used on miscellaneous metal parts and products include magnet wire lubricants and soft temporary protective coatings that are removed prior to installation or further assembly of a part or component.

Reactive adhesive means adhesive systems composed, in part, of volatile monomers that react during the adhesive curing reaction, and, as a result, do not evolve from the film during use. These volatile components instead become integral parts of the adhesive through chemical reaction. At least 70 percent of the liquid components of the system, excluding water, react during the process.

Research or laboratory facility means a facility whose primary purpose is for research and development of new processes and products, that is conducted under the close supervision of technically trained personnel, and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Rubber-to-metal coatings are coatings that contain heat-activated polymer systems in either solvent or water that, when applied to metal substrates, dry to a non-tacky surface and react chemically with the rubber and metal during a vulcanization process.

Startup, initial means the first time equipment is brought online in a facility.

Surface preparation means use of a cleaning material on a portion of or all

of a substrate. This includes use of a cleaning material to remove dried coating, which is sometimes called depainting.

Temporary total enclosure means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Thinner means an organic solvent that is added to a coating after the coating is received from the supplier.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through 204F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Uncontrolled coating operation means a coating operation from which none of the organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Volume fraction of coating solids means the ratio of the volume of coating solids (also known as the volume of nonvolatiles) to the volume of a coating in which it is contained; liters (gal) of coating solids per liter (gal) of coating.

Wastewater means water that is generated in a coating operation and is collected, stored, or treated prior to being discarded or discharged.

Tables to Subpart MMMM of Part 63

If you are required to comply with operating limits by § 63.3892(c), you must comply with the applicable operating limits in the following table:

TABLE 1 TO SUBPART MMMM OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION

For the following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
1. Thermal oxidizer	a. The average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.3967(a).	i. Collecting the combustion temperature data according to § 63.3968(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average combustion temperature at or above the temperature limit.
2. Catalytic oxidizer	a. The average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to § 63.3967(b) (for magnet wire coating machines, temperature can be monitored before or after the catalyst bed); and either	i. Collecting the temperature data according to § 63.3968(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average temperature before (or for magnet wire coating machines after) the catalyst bed at or above the temperature limit.
	b. Ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to § 63.3967(b) (2); or	i. Collecting the temperature data according to § 63.3968(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average temperature difference at or above the temperature difference limit.
	c. Develop and implement an inspection and maintenance plan according to § 63.3967(b)(4) or for magnet wire coating machines according to section 3.0 of appendix A to this subpart.	i. Maintaining and up-to-date inspection and maintenance plan, records of annual catalyst activity checks, records of monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by § 63.3967(b)(4) or for magnet wire coating machines by section 3.0 of appendix A to this subpart, you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
3. Regenerative carbon adsorber.	a. The total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to § 63.3967(c); and	i. Measuring the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each regeneration cycle according to § 63.3968(d); and ii. Maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.
	b. The temperature of the carbon bed, after completing each regeneration and any cooling cycle, must not exceed the carbon bed temperature limit established according to § 63.3967(c).	i. Measuring the temperature of the carbon bed after completing each regeneration and any cooling cycle according to § 63.3968(d); and ii. Operating the carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit.
4. Condenser	a. The average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to § 63.3967(d).	i. Collecting the condenser outlet (product side) gas temperature according to § 63.3968(e); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average gas temperature at the outlet at or below the temperature limit.
5. Concentrators, including zeolite wheels and rotary carbon adsorbers.	a. The average gas temperature of the desorption concentrate stream in any 3-hour period must not fall below the limit established according to § 63.3967(e); and	i. Collecting the temperature data according to 63.3968(f); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average temperature at or above the temperature limit.

TABLE 1 TO SUBPART MMMM OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION—Continued

For the following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
	b. The average pressure drop of the dilute stream across the concentrator in any 3-hour period must not fall below the limit established according to § 63.3967(e).	i. Collecting the pressure drop data according to 63.3968(f); ii. Reducing the pressure drop data to 3-hour block averages; and iii. Maintaining the 3-hour average pressure drop at or above the pressure drop limit.
6. Emission capture system that is a PTE according to § 63.3965(a).	a. The direction of the air flow at all times must be into the enclosure; and either	i. Collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to § 63.3968(b)(1) or the pressure drop across the enclosure according to § 63.3968(g)(2); and ii. Maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
	b. The average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minutes; or	i. See items 6.a.i and 6.a.ii.
	c. The pressure drop across the enclosure must be at least 0.007 inch H_2O, as established in Method 204 of appendix M to 40 CFR part 51.	i. See items 6.a.i and 6.a.ii.
7. Emission capture system that is not a PTE according to § 63.3965(a).	a. The average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.3967(f).	i. Collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.3968(g); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limited.

You must comply with the applicable General Provisions requirements according to the following table:

TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.1(a)(1)–(14)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart MMMM is also specified in § 63.3881.
§ 63.1(c)(1)	Applicability After Standard Established	Yes.	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart MMMM.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.3981.
§ 63.1(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)–(6)	Requirements for Existing Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.3883 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources	Yes	Section 63.3883 specifies the compliance dates.

TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63—Continued

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	Yes	Only sources using an add-on control device to comply with the standard must complete startup, shutdown, and malfunction plans.
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	Yes	Applies only to sources using an add-on control device to comply with the standard.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart MMMM does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.3964, 63.3965, and 63.3966.
§ 63.7(a)(2)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standard. Section 63.3960 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)	Performance Tests Required By the Administrator.	Yes.	
§ 63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for monitoring are specified in § 63.3968.
§ 63.8(a)(4)	Additional Monitoring Requirements	No	Subpart MMMM does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)–(3)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for CMS operations and maintenance are specified in § 63.3968.
§ 63.8(c)(4)	CMS	No	§ 63.3968 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart MMMM does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.3968 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	

TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63—Continued

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.8(c)(8)	CMS Out-of-Control Periods and Reporting.	No	§ 63.3920 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.8(g)(1)–(5)	Data Reduction	No	Sections 63.3967 and 63.3968 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standard.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart MMMM does not have opacity or visible emissions standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.9(h)	Notification of Compliance Status	Yes	Section 63.3910 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in §§ 63.3930 and 63.3931.
§ 63.10(b)(2) (i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for startup, shutdown, and malfunction records only apply to add-on control devices used to comply with the standard.
§ 63.10(b)(2) (vi)–(xi)		Yes.	
§ 63.10(b)(2) (xii)	Records	Yes.	
§ 63.10(b)(2) (xiii)		No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.10(b)(2) (xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c) (1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c) (7)–(8)		No	The same records are required in § 63.3920(a)(7).
§ 63.10(c) (9)–(15)		Yes.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.3920.
§ 63.10(d)(2)	Report of Performance Test Results	Yes	Additional requirements are specified in § 63.3920(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart MMMM does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to add-on control devices at sources using these to comply with the standard.
§ 63.10(e) (1)–(2)	Additional CMS Reports	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.10(e) (3)	Excess Emissions/CMS Performance Reports.	No	Section 63.3920 (b) specifies the contents of periodic compliance reports.
§ 63.10(e) (4)	COMS Data Reports	No	Subpart MMMMM does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares	No	Subpart MMMM does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	

TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63—Continued

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality	Yes.	

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data and which match either the solvent blend name or the chemical abstract series (CAS) number. If a solvent blend matches both the name and CAS number for an entry, that entry's organic HAP mass fraction must be used for that solvent blend. Otherwise, use the organic HAP mass fraction for the entry matching either the solvent blend name or CAS number, or use the organic HAP mass fraction from table 4 to this subpart if neither the name or CAS number match.

TABLE 3 TO SUBPART MMMM OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene.
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene.
3. Hexane	110–54–3	0.5	n-hexane.
4. n-Hexane	110–54–3	1.0	n-hexane.
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene.
6. Aliphatic 140	.....	0	None.
7. Aromatic 100	.....	0.02	1% xylene, 1% cumene.
8. Aromatic 150	.....	0.09	Naphthalene.
9. Aromatic naphtha	64742–95–6	0.02	1% xylene, 1% cumene.
10. Aromatic solvent	64742–94–5	0.1	Naphthalene.
11. Exempt mineral spirits	8032–32–4	0	None.
12. Ligroines (VM & P)	8032–32–4	0	None.
13. Lactol spirits	64742–89–6	0.15	Toluene.
14. Low aromatic white spirit	64742–82–1	0	None.
15. Mineral spirits	64742–88–7	0.01	Xylenes.
16. Hydrotreated naphtha	64742–48–9	0	None.
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene.
18. Stoddard solvent	8052–41–3	0.01	Xylenes.
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes.
20. Varsol® solvent	8052–49–3	0.01	0.5% xylenes, 0.5% ethylbenzene.
21. VM & P naphtha	64742–89–8	0.06	3% toluene, 3% xylene.
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl.

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.

TABLE 4 TO SUBPART MMMM OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS [a]

Solvent type	Average organic HAP mass fraction	Typical organic HAP, percent by mass
Aliphatic [b]	0.03	1% Xylene, 1% Toluene, and 1% Ethylbenzene.
Aromatic [c]	0.06	4% Xylene, 1% Toluene, and 1% Ethylbenzene.

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 3 to this subpart by either solvent blend name or CAS number and you only know whether the blend is aliphatic or aromatic.

[b] Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

Appendix A to Subpart MMMM of Part 63—Alternative Capture Efficiency and Destruction Efficiency Measurement and Monitoring Procedures for Magnet Wire Coating Operations

1.0 Introduction.

1.1 These alternative procedures for capture efficiency and destruction efficiency measurement and monitoring are intended principally for newer magnet wire coating machines where the control device is internal and integral to the oven so that it is difficult or infeasible to make gas measurements at the inlet to the control device.

1.2 In newer gas fired magnet wire ovens with thermal control (no catalyst), the burner tube serves as the control device (thermal oxidizer) for the process. The combustion of solvents in the burner tube is the principal source of heat for the oven.

1.3 In newer magnet wire ovens with a catalyst there is either a burner tube (gas fired ovens) or a tube filled with electric heating elements (electric heated oven) before the catalyst. A large portion of the solvent is often oxidized before reaching the catalyst. The combustion of solvents in the tube and across the catalyst is the principal source of heat for the oven. The internal catalyst in these ovens cannot be accessed without disassembly of the oven. This disassembly includes removal of the oven insulation. Oven reassembly often requires the installation of new oven insulation.

1.4 Some older magnet wire ovens have external afterburners. A significant portion of the solvent is oxidized within these ovens as well.

1.5 The alternative procedure for destruction efficiency determines the organic carbon content of the volatiles entering the control device based on the quantity of coating used, the carbon content of the volatile portion of the coating and the efficiency of the capture system. The organic carbon content of the control device outlet (oven exhaust for ovens without an external afterburner) is determined using Method 25 or 25A.

1.6 When it is difficult or infeasible to make gas measurements at the inlet to the control device, measuring capture efficiency with a gas-to-gas protocol (see § 63.3965(d)) which relies on direct measurement of the captured gas stream will also be difficult or infeasible. In these situations, capture efficiency measurement is more appropriately done with a procedure which does not rely on direct measurement of the captured gas stream.

1.7 Magnet wire ovens are relatively small compared to many other coating ovens. The exhaust rate from an oven is low and varies as the coating use rate and solvent loading rate change from job to job. The air balance in magnet wire ovens is critical to product quality. Magnet wire ovens must be operated under negative pressure to avoid smoke and odor in the workplace, and the exhaust rate must be sufficient to prevent over heating within the oven.

1.8 The liquid and gas measurements needed to determine capture efficiency and control device efficiency using these alternative procedures may be made simultaneously.

1.9 Magnet wire facilities may have many (*e.g.*, 20 to 70 or more) individual coating lines each with its own capture and control system. With approval, representative capture efficiency and control device efficiency testing of one magnet wire coating machine out of a group of identical or very similar magnet wire coating machines may be performed rather than testing every individual magnet wire coating machine. The operating parameters must be established for each tested magnet wire coating machine during each capture efficiency test and each control device efficiency test. The operating parameters established for each tested magnet wire coating machine also serve as the operating parameters for untested or very similar magnet wire coating machines represented by a tested magnet wire coating machine.

2.0 Capture Efficiency.

2.1 If the capture system is a permanent total enclosure as described in § 63.3965(a), then its capture efficiency may be assumed to be 100 percent.

2.2 If the capture system is not a permanent total enclosure, then capture efficiency must be determined using the liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure in § 63.3965(c), or an alternative capture efficiency protocol (see § 63.3965(e)) which does not rely on direct measurement of the captured gas stream.

2.3 As an alternative to establishing and monitoring the capture efficiency operating parameters in § 63.3967(f), the monitoring described in either section 2.4 or 2.5, and the monitoring described in sections 2.6 and 2.7 may be used for magnet wire coating machines.

2.4 Each magnet wire oven must be equipped with an interlock mechanism which will stop or prohibit the application of coating either when any exhaust fan for that oven is not operating or when the oven experiences an over limit temperature condition.

2.5 Each magnet wire oven must be equipped with an alarm which will be activated either when any oven exhaust fan is not operating or when the oven experiences an over limit temperature condition.

2.6 If the interlock in 2.4 or the alarm in 2.5 is monitoring for over limit temperature conditions, then the temperature(s) that will trigger the interlock or the alarm must be included in the start-up, shutdown and malfunction plan and the interlock or alarm must be set to be activated when the oven reaches that temperature.

2.7 Once every 6 months, each magnet wire oven must be checked using a smoke stick or equivalent approach to confirm that the oven is operating at negative pressure compared to the surrounding atmosphere.

3.0 Control Device Efficiency.

3.1 Determine the weight fraction carbon content of the volatile portion of each coating, thinner, additive, or cleaning material used during each test run using either the procedure in section 3.2 or 3.3.

3.2 Following the procedures in Method 204F, distill a sample of each coating, thinner, additive, or cleaning material used during each test run to separate the volatile portion. Determine the weight fraction carbon content of each distillate using ASTM Method D5291–02, ''Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants'' (incorporated by reference, see § 63.14).

3.3 Analyze each coating, thinner, additive or cleaning material used during each test run using Method 311. For each volatile compound detected in the gas chromatographic analysis of each coating, thinner, additive, or cleaning material calculate the weight fraction of that whole compound in the coating, thinner, additive, or cleaning material. For each volatile compound detected in the gas chromatographic analysis of each coating, thinner, additive, or cleaning material calculate the weight fraction of the carbon in that compound in the coating, thinner, additive, or cleaning material. Calculate the weight fraction carbon content of each coating, thinner, additive, or cleaning material as the ratio of the sum of the carbon weight fractions divided by the sum of the whole compound weight fractions.

3.4 Determine the mass fraction of total volatile hydrocarbon (TVH_i) in each coating, thinner, additive, or cleaning material, i, used during each test run using Method 24. The mass fraction of total volatile hydrocarbon equals the weight fraction volatile matter (W_v in Method 24) minus the weight fraction water (W_w in Method 24), if any, present in the coating. The ASTM Method D6053–00, ''Standard Test Method for Determination of Volatile Organic Compound (VOC) Content of Electrical Insulating Varnishes'' (incorporated by reference, see § 63.14), may be used as an alternative to Method 24 for magnet wire enamels. The specimen size for testing magnet wire enamels with ASTM Method D6053–00 must be 2.0 ± 0.1 grams.

3.5 Determine the volume (VOL_i) or mass ($MASS_i$) of each coating, thinner, additive, or cleaning material, i, used during each test run.

3.6 Calculate the total volatile hydrocarbon input ($TVHC_{inlet}$) to the control device during each test run, as carbon, using Equation 1:

$$TVHC_{inlet} = \sum_{i=1}^{n} (TVH_i \times VOL_i \times D_i \times CD_i) \qquad \text{(Eq. 1)}$$

where:

TVH_i = Mass fraction of TVH in coating, thinner, additive, or cleaning material, i, used in the coating operation during the test run.

VOL_i = Volume of coating, thinner, additive, or cleaning material, i, used in the coating operation during the test run, liters.

D_i = Density of coating, thinner, additive, or cleaning material, i, used in the coating operation during the test run, kg per liter.

CD_i = Weight fraction carbon content of the distillate from coating, thinner, additive, or cleaning material, i, used in the coating operation during the test run, percent.

n = Number of coating, thinner, additive, and cleaning materials used in the coating operation during the test run.

3.7 If the mass, $MASS_i$, of each coating, solvent, additive, or cleaning material, i, used during the test run is measured directly then $MASS_i$ can be substituted for $VOL_i \times D_i$ in Equation 1 in section 3.6.

3.8 Determine the TVHC output ($TVHC_{outlet}$) from the control device, as carbon, during each test run using the methods in § 63.3966(a) and the procedure for determining M_{fo} in § 63.3966(d). $TVHC_{outlet}$ equals M_{fo} times the length of the test run in hours.

3.9 Determine the control device efficiency (DRE) for each test run using Equation 2:

$$DRE = \frac{(TVHC_{inlet} - TVHC_{outlet})}{TVHC_{inlet}} \times 100 \qquad \text{(Eq. 2)}$$

3.10 The efficiency of the control device is the average of the three individual test run values determined in section 3.9.

3.11 As an alternative to establishing and monitoring the destruction efficiency operating parameters for catalytic oxidizers in § 63.3967(b), the monitoring described in sections 3.12 and 3.13 may be used for magnet wire coating machines equipped with catalytic oxidizers.

3.12 During the performance test, you must monitor and record the temperature either just before or just after the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature either just before or just after the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer and for the catalytic oxidizers in identical or very similar magnet wire coating machines represented by the tested magnet wire coating machine.

3.13 You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s). The plan must address, at a minimum, the elements specified in sections 3.14 and 3.15, and the elements specified in either (a) section 3.16 or (b) sections 3.17 and 3.18.

3.14 You must conduct a monthly external inspection of each catalytic oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

3.15 You must conduct an annual internal inspection of each accessible catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must replace the catalyst bed or take corrective action consistent with the manufacturer's recommendations. This provision does not apply to internal catalysts which cannot be accessed without disassembling the magnet wire oven.

3.16 You must take a sample of each catalyst bed and perform an analysis of the catalyst activity (*i.e.*, conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures. This sampling and analysis must be done within the time period shown in Table 1 below of the most recent of the last catalyst activity test or the last catalyst replacement. For example, if the warranty for the catalyst is 3 years and the catalyst was more recently replaced then the sampling and analysis must be done within the earlier of 26,280 operating hours or 5 calendar years of the last catalyst replacement. If the warranty for the catalyst is 3 years and the catalyst was more recently tested then the sampling and analysis must be done within the earlier of 13,140 operating hours or 3 calendar years of the last catalyst activity test. If problems are found during the catalyst activity test, you must replace the catalyst bed or take corrective action consistent with the manufacturer's recommendations.

TABLE 1.—CATALYST MONITORING REQUIREMENTS

If the catalyst was last (more recently) replaced and the warranty period is . . .	Then the time between catalyst replacement and the next catalyst activity test cannot exceed the earlier of . . .	And the catalyst was more recently tested, then the time between catalyst activity tests cannot exceed the earlier of . . .
1 year	8,760 operating hours or 5 calendar years	8,760 operating hours or 3 calendar years.
2 years	15,520 operating hours or 5 calendar years	8,760 operating hours or 3 calendar years.
3 years	26,280 operating hours or 5 calendar years	13,100 operating hours or 3 calendar years.
4 years	35,040 operating hours or 5 calendar years	17,520 operating hours or 3 calendar years.
5 or more years	43,800 operating hours or 5 calendar years	21,900 operating hours or 3 calendar years.

3.17 During the performance test, you must determine the average concentration of organic compounds as carbon in the magnet wire oven exhaust stack gases (C_c in Equation 1 in § 63.3966(d)) and the destruction efficiency of the catalytic oxidizer, and calculate the operating limit for oven exhaust stack gas concentration as follows. You must identify the highest organic HAP content coating used on this magnet wire coating machine or any identical or very similar magnet wire coating machines to which the same destruction efficiency test results will be applied. Calculate the percent emission reduction necessary to meet the magnet wire coating emission limit when using this coating. Calculate the average concentration of organic compounds as carbon in the magnet wire oven exhaust stack gases that would be equivalent to exactly meeting the magnet wire coating emissions limit when using the highest organic HAP content coating. The maximum operating limit for oven exhaust stack gas concentration equals 90 percent of this calculated concentration.

3.18 For each magnet wire coating machine equipped with a catalytic oxidizer you must perform an annual 10 minute test of the oven exhaust stack gases using EPA Method 25A. This test must be performed under steady state operating conditions similar to those at which the last destruction efficiency test for equipment of that type (either the specific magnet wire coating machine or an identical or very similar magnet wire coating machine) was conducted. If the average exhaust stack gas concentration during the annual test of a magnet wire coating machine equipped with a catalytic oxidizer is greater than the operating limit established in section 3.17 then that is a deviation from the operating limit for that catalytic oxidizer. If problems are found during the annual 10-minute test of the oven exhaust stack gases, you must replace the catalyst bed or take other corrective action consistent with the manufacturer's recommendations.

3.19 If a catalyst bed is replaced and the replacement catalyst is not of like or better kind and quality as the old catalyst, then you

must conduct a new performance test to determine destruction efficiency according to § 63.3966 and establish new operating limits for that catalytic oxidizer unless destruction efficiency test results and operating limits for an identical or very similar unit (including consideration of the replacement catalyst) are available and approved for use for the catalytic oxidizer with the replacement catalyst.

3.20 If a catalyst bed is replaced and the replacement catalyst is of like or better kind and quality as the old catalyst, then a new performance test to determine destruction efficiency is not required and you may continue to use the previously established operating limits for that catalytic oxidizer.

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Part III

Department of Agriculture

Natural Resources Conservation Service

7 CFR Part 1469

Conservation Security Program; Proposed Rule

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 1469

RIN 0578–AA36

Conservation Security Program

AGENCY: Natural Resources Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Natural Resources Conservation Service (NRCS) is issuing a proposed rule with a request for comments. This proposed rule implements the Conservation Security Program (CSP) set out in the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002, enacted on May 13, 2002. This proposed rule describes how NRCS will implement the CSP to provide financial and technical assistance to agricultural producers who conserve and improve the quality of soil, water, air, energy, plant and animal life, and support other conservation activities. This proposed rule also addresses public comments that NRCS solicited in an advanced notice of proposed rulemaking (ANPR) published February 18, 2003, in the **Federal Register** and other comments NRCS received in public workshops and focus groups. In addition, Congress is currently considering legislation that amends the CSP statute. Pending the enactment of the legislation, NRCS intends to publish a supplement to this proposed rule. The supplement will amend the proposed rule to provide further guidance as to how the agency will implement CSP and to address potential changes in law.

DATES: Comments must be received by March 2, 2004.

ADDRESSES: Send comments by mail to Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, or by e-mail to *david.mckay@usda.gov;* Attn: Conservation Security Program. You may access this proposed rule via the Internet through the NRCS homepage at http://www.nrcs.usda.gov. Select ''Farm Bill.''

FOR FURTHER INFORMATION CONTACT: David McKay, Conservation Planning Team Leader, Conservation Operations Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890, telephone: (202) 720–1845; fax: (202) 720–4265. Submit e-mail to: *david.mckay@usda.gov,* Attention: Conservation Security Program.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The program was authorized with an unspecified annual funding level from FY2003 through FY2007, with an overall spending cap of $3.77 billion as of the date of this publication.

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, the Natural Resources Conservation Service (NRCS) conducted a benefit cost analysis of this program, which is included in the Regulatory Impact Analysis of this rule. A summary of the analysis follows.

NRCS developed a simulation model to analyze CSP benefits and costs. The model assesses producer participation and the overall benefits and costs to society associated with that participation. The model is based on a series of composite farms, replicating the process of calculating the CSP participation decision. Given farm-level estimates of participation, enrolled acreage, payments, and costs, the model estimates on-site and environmental (off-site) benefits, net economic costs, government costs, government-to-producer transfer payments, net benefit to society, and the benefit-cost ratio.

The model calculates the overall CSP payment by calculating several payment components individually, and then by summing the results of: the base payment, cost-sharing for installation of new structural practices and adoption of new land management practices, cost-sharing for maintenance of existing structural and land management practices, and enhancement payments. The Net Present Value (NPV) of each payment is determined by a payment rate per acre, the number acres to which the payment applies, contract years in which the payment is made (*i.e.*, whether the payment is made on a one-time or annual basis), discounted to the present using a 7% annual discount rate. Payments for structural and land management practices were calculated using a methodology similar to that used for the Environmental Quality Incentives Program (EQIP) Benefit/Cost Analysis, Final Report, May 29, 2003.

In the absence of the CSP program, adoption of conservation practices would reflect existing incentives such as those provided by other USDA programs. For purposes of this analysis the baseline is assumed to be zero, or no additional adoption of conservation practices without the program.

The benefit analysis is limited to certain resource concerns for which we have reliable estimates of the benefits that accrue with the application of conservation practices. For purposes of the CSP benefit cost analysis, benefits arise from the installation and adoption of practices required as a condition for enrollment in the program, or from the maintenance of practices beyond what would typically occur without maintenance payments. The difference between what would be the presumed practice effectiveness without maintenance payments and the enhanced effectiveness that would be expected with CSP maintenance payments represents the benefit of the program. This analysis does not include benefits that will accrue after the CSP contract ends. Although benefits may continue to be generated if the conservation practices remain in place after the end of the contract, the program could not claim those benefits because the participant is under no obligation to maintain the practices beyond the duration of the contract. Benefits as the result of CSP participation are expressed as either on-site (those that accrue to the participant) or environmental (those that accrue to society).

Two cost figures are germane. First, government expenditure includes all government expenditures relating directly to a specific CSP contract. These include financial assistance to the participant including base payments, existing and new practice payments, and enhancement payments; and technical assistance costs.

The second cost item of interest is the total economic cost to the economy. Total economic cost include total practice implementation costs (cost-share and participant cost), total practice maintenance costs, and technical assistance costs.

Program net benefits are the sum of all CSP-related benefits received by society less all CSP-related costs incurred by society. CSP-related benefits include on-site and environmental benefits that accrue from practice installation, adoption, and maintenance.

The net benefit of the CSP to society is CSP-related benefits less CSP-related costs. Note that payments to participants cancel, as they are a benefit to participants but a cost to society. Thus, transfer payments received by participants, payment above CSP-related conservation costs, also cancel out of the net benefit calculation. However, these transfer payments can produce unintended and potentially adverse consequences.

When payments closely approximate the costs of program participation, transfer payments are minimized. The use of regional, rather than national average rental rates to calculate the base

payment helps keep these payments from becoming large relative to land rental rates in areas where local rental rates are low relative to national average rates and reduces the likelihood that payments will, in fact, exceed cost.

General issues for analysis were identified, and a range of methods for limiting the CSP to stay within budgetary constraints or ramp-up options were analyzed. Questions raised in the Advanced Notice of Proposed Rulemaking (ANPR) serve as the basis for identifying important decision points for analysis. The identified alternatives include:

(1) The full CSP program as defined in Title II of the 2002 Farm Bill, with the maximum allowable cost share under the statute of 75%.

(2) The full CSP program as defined in Title II of the 2002 Farm Bill, with minimal cost share of 5%. Three sub-alternatives were then analyzed, where the model restricted participation by each tier level respectively.

(3) The CSP program limited by resource concern with minimal cost share. The resource concerns that would be required to be addressed in each contract would include soil, water, and wildlife. Two sub-alternatives were then analyzed. In the first sub-alternative, the base payment was calculated as 50% of the regional rental rate. In the second sub-alternative, the base payment was further reduced to 10% of the regional rental rate, and the enhancement payment calculation was modified to provide potentially larger enhancement payments.

(4) The CSP program limited by geography with minimal cost share. This alternative essentially implemented CSP as a pilot program, limited to six counties, one from each of the NRCS administrative regions.

CSP participation will require that producers address the treatment of identified resource concerns to a level that meets or exceeds the appropriate non-degradation standard according to the NRCS technical guide. A sensitivity analysis was utilized to identify a reasonable range of the additional costs that would be incurred for a given increase in benefits that may be obtained by improving the condition of the resource beyond the minimally acceptable level.

The results indicate that staying within the budget, while also offering CSP as an entitlement as mandated by the 2002 farm bill, will be difficult at best. Some combination of limitations or constraints is likely to be needed. The analyzed alternatives provide insight into what type of limitations could be used, and how they would affect government payments, producer participation, and program net benefits. While only one of the scenarios actually achieves government expenditures below the budget limit, the model does show that limiting program payments, and program options can reduce participation and program expenditures.

Although the analysis provides estimates of the social net benefits of each alternative examined, its primary value is to illustrate the relative order of the identified alternatives, rather than provide accurate estimates of the costs and benefits. NRCS based its estimates on a number of assumptions because of substantial data gaps. There is, for example, no available information on the benefits associated with major program elements, such as enhancement activities above and beyond the non-degradation level. Instead, the RIA used estimates generated from experience with EQIP, CRP, and other USDA conservation programs. NRCS also assumes that producers would enroll in CSP if the program provided any positive net benefit to them (*i.e.*, even as small as $1). This assumption does not take into consideration producers' cash flow constraints, which along with other factors could affect participation. Since the analysis does not have information on the behavioral response of producers to the incentives provided by CSP, the benefits analysis provided in the RIA is largely a hypothetical construct and does not reflect the benefits of the proposed program and the identified alternatives. NRCS intends to refine the analysis for the final rule. NRCS welcomes comments and additional data that may assist in this refinement.

A copy of the analysis is available upon request from Thomas Christensen, Acting Director, Conservation Operations Division, Natural Resources Conservation Service, Room 5241–S, Washington, DC 20250–2890, or electronically at *http://www.nrcs.usda.gov/programs/csp/index.html* under ''Additional Information''.

The administrative record is available for public inspection in Room 5212 South Building, USDA, 14th and Independence Avenue SW., Washington, DC.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 533, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

A draft Environmental Assessment (EA) has been prepared to assist in determining whether this proposed rule, if implemented, would have a significant impact on the quality of the human environment. Based on the results of the draft EA, NRCS proposes issuing a Finding Of No Significant Impact (FONSI) before a final rule is published. Copies of the draft EA and draft FONSI may be obtained from Thomas Christensen, Acting Director, Conservation Operations Division, Natural Resources Conservation Service, Room 5241–S, Washington, DC 20250–2890, and electronically at *http://www.nrcs.usda.gov/programs/csp/index.html* under ''Program Information.'' Mail comments on the draft EA and draft FONSI by March 2, 2004, to Thomas Christensen, Conservation Operations Division, Natural Resources Conservation Service, Room 5241, Washington, DC 20250–2890, or submit them via the Internet to *farmbillrules@usda.gov*.

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of title 44, United States Code. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this proposed final rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS is proposing to develop an online application and information system for public use.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this proposed rule are not retroactive. The provisions of this proposed rule preempt State and local laws to the extent that such laws are inconsistent with this proposed rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354), USDA classified this proposed rule as major and NRCS conducted a risk assessment. The risk assessment examined environmental degradation of soil, water and air quality, water quantity, and plant and wildlife habitat in absence of the program. The risk assessment is available upon request from David McKay, Conservation Planning Team Leader, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, and electronically at *http://www.nrcs.usda.gov/programs/csp/index.html* under ''Program Information''.

Unfunded Mandates Reform Act of 1995

NRCS assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion of the Conservation Security Program

Overview

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, May 13, 2002) (the Act) amended the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*) to authorize the Conservation Security Program (CSP). The program is administered by USDA's Natural Resources Conservation Service (NRCS). The CSP is a voluntary program that provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands. Such lands include cropland, grassland, prairie land, improved pasture, and range land, as well as forested land and other non-cropped areas that are an incidental part of the agriculture operation.

Following the principles in USDA's Food and Agriculture Policy—Taking Stock for the New Century, and recognizing CSP's unique opportunities in the context of USDA's conservation programs, the Secretary's vision for CSP is:

(1) To identify and reward those farmers and ranchers meeting the very highest standards of conservation and environmental management on their operations;

(2) To create powerful incentives for other producers to meet those same standards of conservation performance on their operations; and

(3) To provide public benefits for generations to come.

In short, CSP should reward the best and motivate the rest.

Another USDA report—21st Century Agriculture: A Critical Role for Science and Technology—highlights a broad range of conventional and emerging technologies that take advantage of new developments in soil, water, nutrient, and pest management. The report accentuates the challenges and opportunities of several key issues, including technology transfer, technology development, and sustainable agriculture systems. These conservation technologies provide a basis for implementation of the CSP enhancement payments through the application of intensive management measures and resource enhancement activities. These management activities can create powerful opportunities for producers to achieve even greater environmental performance and additional benefits for society. CSP will assure that both high-end and affordable conservation technologies are identified and utilized as intensive management activities to assure eligibility of a wide range of operations. CSP and other supportive conservation policies can help meet the Nation's goals for conservation, land productivity, enhanced food security, and stronger economic growth through the promotion of sound conservation principles and advancements in science and technology. In CSP, the enhancement provisions of the program should be specifically designed to showcase highly effective conservation activities and demonstrate how more intensive management activities can improve the resources and provide for more efficient resource utilization and energy conservation. Scientific and technological advances hold great promise, but their full benefits will not be fully realized without practical application and adoption of the new technology on working agricultural lands through programs like the CSP. A copy of the USDA report is available electronically at *http://www.fas.usda.gov/icd/stconf/pubs/scitech2003/index.htm* and is dated June 2003.

USDA intends that CSP will recognize those farmers and ranchers, the land stewards, who meet the highest standards of conservation and environmental management. By managing all of the natural resources on their farms and ranches in a sustainable fashion to these high standards, stewards of the land benefit themselves, their communities and society as a whole. CSP can be an important tool for those stewards and others who strive towards the highest standards of conservation and environmental management. CSP helps sustain the economic well-being of those farmers and ranchers who reach this pinnacle of good land stewardship, and enhance the ongoing production of clean water and clean air on their farms and ranches—which are valuable commodities to all Americans.

The fundamental philosophy and intent of CSP is to support ongoing conservation stewardship of working agricultural lands by providing payments and assistance to producers to maintain and enhance the condition of the resources. To implement the Secretary's vision, the program will reward owners and operators of agricultural lands for their conservation stewardship efforts, and assist them with the implementation and maintenance of additional conservation measures that can improve the natural resource conditions of their agriculture operations. CSP particularly targets producers and activities that can provide the greatest additional benefits for the resource concerns identified in this rule and in CSP sign-up announcements. NRCS is also encouraging those who do not meet the sign-up requirements for CSP to initiate a review of the natural resource conditions on their land and begin or continue moving toward achieving the minimum conservation requirements to enter CSP at a later sign-up. Other USDA programs may be available for technical or financial assistance to help them achieve their resource management goals.

CSP: An Entitlement Program With a Budget Cap

As originally enacted, the Conservation Security Program was an entitlement program where many producers would have received payments if they were eligible. The Administration has been working diligently to complete the regulations for CSP. While developing the regulations to implement CSP, USDA has confronted several challenges while trying to balance conflicting pieces of legislation. The greatest challenge of

these continuing changes was to design a new conservation entitlement program with a cap on its total expenditures over multiple years. Subsequent to the enactment of the 2002 Act, the Omnibus Bill of 2003 amended the Act to limit CSP's total expenditures to a total of $3.8 billion over eleven years (Fiscal Year 2003 through Fiscal Year 2013). The statute did not provide direction as to how the Secretary should implement a broad entitlement program with the statutory fiscal constraints.

The Omnibus Appropriations Bill for Fiscal Year 2004 (Conference Report H. Rpt. 108–401), however, contains language that, if enacted, would remove the $3.8 billion funding limitation for the program over eleven years, but also institute a cap for Fiscal Year 2004 of $41 million. While considering the potential change in law, the Department decided to publish and seek public comment on the preferred CSP alternative contained in this proposed rule. Under the preferred alternative, NRCS can implement CSP either with or without an expenditure cap. In the interim, the Administration will continue to consider the potential program design and implementation issues that would arise if current law were amended and the multiple-year expenditure cap were removed. Pending the enactment of this legislation, NRCS intends to publish a supplement to this proposed rule to address the potential changes in law.

Any limit imposed by a budget cap greatly reduces the potential scope of the program. For example, USDA's Economic Research Service (ERS) estimates that over 1.8 million farms and ranches may be eligible for CSP, using the land eligibility criteria found in the authorizing legislation. If all of these agricultural operations were enrolled, the cost of the program would exceed the current $3.77 billion cap potentially in the first sign-up. In contrast, NRCS estimates that the budget cap would allow less than 50,000 total agricultural operations to participate over the life of the program. Estimates derived from a variety of analyses indicate that the average Tier III contract, based on nationally averaged data, could be near $15,000 per year. If contracts were an average of 7 years in duration, the statutory funding could support as estimated 30,000 Tier III contracts. The average Tier I and Tier II contracts could be near $7,000 annually. If contracts were to average 5 years in duration, the statutory funding could support an estimated 90,000 Tier I and II contracts.

Furthermore, NRCS expects that a large number of producers will seek participation in CSP and ask for assistance to determine their potential eligibility for the program. Thus the statutory cap on technical assistance of 15% becomes another limiting factor for implementing CSP. By law, NRCS cannot incur technical assistance costs for NRCS employees or approved technical assistance providers in excess of 15 percent of the available funds.

The Secretary is proposing ways to address the capped entitlement issue and still deliver an effective CSP program by conducting periodic CSP sign-ups and through the use of additional sign-up eligibility requirements, contract requirements for additional conservation treatment, enrollment categories for determining funding, and constrained base and practice payments.

In this rulemaking NRCS is proposing an approach based on five elements:

1. Limit Sign-ups: Conduct periodic CSP sign-ups.

2. Eligibility: Criteria should be sufficiently rigorous to ensure that participants are committed to conservation stewardship. Additionally, eligibility criteria should ensure that the most pressing resource concerns are addressed.

3. Contracts: Requirements should be sufficiently rigorous to ensure that participants undertake and maintain high levels of stewardship.

4. Enrollment Categories: Prioritize funding to ensure that those producers with the highest commitment to conservation are funded first.

5. Payments: Structure payments to ensure that environmental benefits will be achieved.

Below is a detailed discussion of the proposed approach as well as other alternatives. NRCS seeks comment on its overall approach and on the alternatives.

NRCS Preferred Approach

1. Limit Sign-Ups: Conduct Periodic CSP Sign-Ups

NRCS proposes to offer periodic CSP sign-ups, similar to sign-ups conducted by USDA for the Conservation Reserve Program (CRP). NRCS would publish a CSP sign-up announcement prior to the opening of the sign-up period. The public sign-up announcement would include important programmatic information (as discussed in Section 1469.20 of the regulation), including the length of the sign-up period and the ''size'' of the sign-up (as measured in the total dollar value of the CSP contracts NRCS enroll into the program from a given sign-up).

NRCS believes implementing CSP through sign-ups is the best way to manage and effectively deliver the program.

2. Eligibility: Criteria Should Be Sufficiently Rigorous To Ensure That Participants Are Committed to Conservation Stewardship. Additionally, Eligibility Criteria Should Ensure That the Most Pressing Resource Concerns Are Addressed

The CSP statute defines eligible producers as those who submit an approved conservation security plan and enter into a CSP contract to carry out the Conservation security plan. Eligible land is defined as all private agricultural land, including incidental forested land, excluding land that is under a CRP, WRP, or GRP contract, or that has not been planted or considered to be planted in the last 4 of the 6 years preceding the enactment of the 2002 Act.

To ensure that CSP participants have a demonstrated commitment to conservation, NRCS is proposing to require CSP applicants to address specified resource concerns, soil quality and water quality for tier I and tier II levels prior to program enrollment; and NRCS estimates that requiring existing conservation stewardship will increase the environmental benefits generated by the program.

Soil Quality for the purposes of the CSP means resource concerns and/or opportunities that are addressed under Soil Condition in Quality Criteria of the NRCS technical guides. Soil condition in the NRCS technical guides includes concerns related to depletion of soil organic matter content and the physical condition of the soil relative to ease of tillage, fitness as a seedbed, the impedance to seedling emergence, root penetration and overall soil productivity.

Water Quality for the purposes of the CSP means resource concerns and/or opportunities that are addressed under Quality Criteria for Water Quality of the NRCS technical guides, including concerns such as excessive nutrients, pesticides, sediment, contaminants, pathogens and turbidity in surface waters and excessive nutrients and pesticides in ground waters.

Conservation systems developed for the purpose of meeting quality criteria for water quality and soil quality will vary depending on site characteristics including: Slope, climate, soil texture, and other soil characteristics and agricultural operation management considerations. Conservation systems are designed to match the particular business objectives and specific location of the agricultural operation. Conservation practices typically

installed on cropland systems might include: Crop rotation, residue management, fertilization, weed control, insect control, buffers, field borders and irrigation water management, if irrigated. Conservation practices typically installed on orchard and vineyard systems might include: Crop selection, residue management, fertilization, weed control, insect control, buffers, field borders and irrigation water management, if irrigated. Conservation practices typically installed on pasture systems might include: Pasture and hayland planting, fertilization, grazing management, haying, weed control, water facilities, cross fencing and irrigation water management, if irrigated. Conservation practices typically installed on rangeland systems might include: Prescribed grazing, brush management, prescribed burning, water development, fencing, riparian area management, weed control and range seeding.

Additionally, to ensure that CSP's limited resources are focused first on the most pressing environmental concerns, NRCS is proposing to impose eligibility requirements based on selected priority watersheds. Only producers located within those watersheds will be eligible for a given sign-up. A majority of the agricultural operation must reside in the selected watershed. The eligible watersheds will be announced and identified through CSP sign-up announcement. The watersheds selected for CSP eligibility may vary in each CSP sign-up.

NRCS proposes to identify watersheds (using eight-digit hydrologic unit codes developed by the U.S. Geological Survey) around the nation based on objective information from natural resource, environmental quality, and agricultural activity data. The watershed prioritization process will consider several factors, including the vulnerability of surface and groundwater quality, the potential for excessive soil quality degradation, and the condition of grazing land in the watershed.

Limiting participation to high-priority watersheds in this manner will allow NRCS to reduce the administrative burden on applicants, as well as, technical assistance costs of processing a large number of applications that cannot be funded. For example, data shows that in fiscal year 2003 about 750,000 agricultural producers received some kind of USDA program benefits. Assuming that as many as 500,000 producers might apply for enrollment in each CSP sign-up and that current funding would only support about 50,000 total contracts, the majority of applicants would have completed an extensive application process only to be frustrated by the limitation on funding. Additionally, NRCS would have to provide technical assistance to 450,000 producers who would not be able to participate in CSP. Because of the statutory limit on technical assistance to 15% CSP's total funding, this would not be feasible.

By using a system of selected watershed and enrollment categories, NRCS can make the program available ultimately in all 50 States, the Caribbean Area, and the Pacific Basin area. The program would benefit participants without regard to the size of their operation, crops produced, geographic location, or any other factor unrelated to the conservation characteristics of the operation.

3. Contract Requirements Should Be Sufficiently Rigorous To Ensure That Participants Undertake and Maintain High Levels of Stewardship

The CSP statute requires that a Conservation security plan for a Tier I CSP contract address one or more significant resource concerns on part of an agricultural operation. NRCS is proposing that CSP participants must address the nationally significant resource concerns of water quality and soil quality as described in Section III of the NRCS Field Office Technical Guide (FOTG).

The CSP statute requires that a conservation security plan for a CSP Tier II contract must address one or more significant resource concerns on the entire agricultural operation. NRCS is proposing that CSP participants must address the nationally significant resource concerns of water quality and soil quality as described in Section III of the NRCS FOTG. In addition, by the end of the contract period, they must address an additional resource concern to be selected by the applicant and approved by NRCS, over the entire agricultural operation.

The CSP statute requires that a conservation security plan for a CSP Tier III contract must address all significant resource concerns on the entire agricultural operation.

NRCS is proposing that CSP participants in all tiers must address, by the end of the contract period, additional requirements as required in the enrollment categories as selected by an applicant or in the sign-up announcement over the contract acreage.

NRCS is proposing, in addition to the statutorily mandated contract requirements, to give funding priority to producers who are willing to undertake enhancement activities, such as addressing locally identified resource concerns or providing important assessment and evaluation information.

4. Prioritize Funding To Ensure That Those Producers With the Highest Commitment to Conservation Are Funded First

To effectively implement the program, NRCS believes it is necessary to prioritize applicants based on their existing level of conservation performance and their willingness to undertake additional conservation activities above and beyond the regulatory contract requirements for their tier of participation. This does not mean that individual contracts must compete with each other according to an Environmental Benefits Index, as in the Conservation Reserve Program. Rather, NRCS would place applicants in enrollment categories and include in the sign-up announcement the order in which those categories would be funded. All applicants in a category and a subcategory selected for funding would be offered a CSP contract. NRCS will develop criteria for construction of the enrollment categories such as the soil conditioning index, soil and water quality conservation practices and systems, and grazing land condition.

Sub-categories may be established within the categories. All applications which meet the sign-up criteria will be placed in an enrollment category regardless of available funding. An application will be placed in the highest priority enrollment category or categories for which the application qualifies. Categories will be funded in priority order until the available funds are exhausted.

One issue arises in grouping contracts by enrollment categories. What should happen if the first five priority categories can be fully funded, but the sixth cannot? Should NRCS prorate the funding for the sixth category, not fund that category at all (saving funds for a future sign-up), or choose amongst category six applicants according to some criteria (for example by date of application or by identifying priority subgroups)? NRCS invites comment on this issue.

5. Structure Payments To Ensure That Environmental Benefits Will Be Achieved

The Act requires base payments of CSP to be based on 2001 national rental rates by land use category or ''another appropriate rate that ensures regional equity'' (emphasis added). NRCS proposes using regional and local land

rental data for FY2001 with adjustments to ensure consistency and regional equity. In addition, NRCS proposes to apply a consistent reduction factor to all regional rental rates to scale down the share of payments going to base payments (for all tiers of participation). The more that program payments are made toward aspects directly related to additional environmental performance, rather than on base payments, more conservation is likely to be obtained. The results of the CSP proposed rule economic analysis indicates that, all other payment held constant, the lower the reduction factor used on regional rental rates, the less the effect the base payment has on the overall producer payment. This results in more net environmental benefits accruing to the program. This will lower payments to producers, but does it in an equitable manner and allows more producers to participate within the available funding. NRCS proposes that the base rate, once established, will be fixed over the life of the program. NRCS invites comment on the appropriate reduction factor, and whether it should be fixed or vary by sign-up.

To ensure funding go towards the greatest environmental benefit, NRCS is also proposing that the practice payments be constrained to below that offered by other USDA cost-share programs.

NRCS is proposing to utilize the enhancement component of a CSP payment to increase conservation performance regardless of the tier of participation (including activities related to energy conservation) as a result of additional effort. Enhancement activities would be determined by the State Conservationist with consideration of national priorities and any emphasis designated in the sign-up announcement. The statute offers five types of enhancement activities and NRCS is seeking comments on the following concepts:

- The improvement of a significant resource concern to a condition that exceeds the requirements for the participant's tier of participation and contract requirements in Section 1469.5. For example, activities that increase the performance of management practices (management intensity) that contribute to additional improvement to the condition of the resources, or provide for more efficient resource utilization and energy conservation;
- An improvement in a priority local resource condition, as determined by NRCS. For example, addressing water quality and wildlife concerns by the installation of riparian forest buffers to provide shade and cool surface water temperatures to restore critical habitat for salmon;
- Participation in an on-farm conservation research, demonstration, or pilot project. For example, conducting field trials with cover crops, mulches, land management practices to control cropland and stream bank erosion;
- Cooperation with other producers to implement watershed or regional resource conservation plans that involve at least 75% of the producers in the targeted area. For example, carrying out land management practices specifically called for in a watershed plan that control erosion and sedimentation, improve soil organic matter levels, reduce surface water contamination, and improve the condition of related resources; or
- Implementation of assessment and evaluation activities relating to practices included in the Conservation Security Plan, such as water quality sampling at field edges, drilling monitoring wells and collecting data, and gathering plant samples for specific analysis.

Alternative Approaches

In addition to the preferred approach, NRCS considered several alternatives. NRCS is seeking comments on the proposed approach and these alternatives.

1. Use Enrollment Categories To Prioritize CSP Resources in High-Priority Watersheds Identified by NRCS Administrative Regions

This alternative approach is similar to the ''NRCS Preferred Approach'' outlined above as it focuses CSP participation in high-priority watersheds that are identified using natural resource and land use data. Importantly, this approach differs in that it does not restrict program eligibility to a limited number of watersheds.

Under the ''NRCS Preferred Approach,'' the agency proposes to set a ''high bar'' for producer eligibility in two steps—by (1) requiring producers to have at a minimum already addressed all national priority resource concerns, and (2) restricting eligibility to high-priority watersheds.

This alternative proposes a modified process for determining eligibility and using watersheds to focus CSP's resources. The proposed alternative process is outlined below:

- NRCS will set a high bar for producer eligibility by requiring producers to have at a minimum already addressed all water quality and soil quality resource concerns (the minimum conservation requirement increases for each CSP Tier, as under the ''NRCS Preferred Approach''). In addition, this alternative may require a higher level of demonstrated conservation (*e.g.*, requiring a minimum soil condition index score).
- Prior to each sign-up period, NRCS will rank all watersheds in the country based on objective data (*e.g.*, land use, agricultural activity, and/or environmental quality vulnerability). The watersheds will be ranked separately in each NRCS administrative region in order to account for regional and local resource concerns and priorities. (Watersheds are land regions that drain into a river or other body of water, and natural resource agencies designate watershed boundaries for planning purposes. Under this approach, NRCS will use watershed boundaries of a ''medium'' size [at the eight-digit hydrologic unit scale developed by the U.S. Geological Survey].)
- NRCS will then place the regionally prioritized watersheds into CSP enrollment categories. The priority ordering of watersheds may change with each CSP sign-up, depending on national conservation priorities and resource conditions.
- NRCS will place eligible producers into the watershed-based enrollment categories.
- Producers will be further ranked in each watershed-based category according to their willingness to implement additional conservation, existing level of conservation effort (*e.g.*, number of targeted conservation practices already installed and/or soil condition index score), and other program participation priorities as determined by the Secretary.
- NRCS will announce through a CSP sign-up notice the priority ranking of watersheds and the enrollment categories the agency has placed the watersheds. The sign-up notice will also announce the dollar ''size'' of the CSP sign-up, as well as provide an estimate of how many enrollment categories will likely be funded.

There are many benefits to prioritizing and focusing conservation activities in watersheds with recognized resource concerns and environmental quality vulnerability. Given the statutory spending cap and the relatively limited number of agricultural operations that could be enrolled into CSP, it is important to concentrate CSP's resources in order to generate demonstrable conservation improvements in areas of the country that face the greatest environmental challenges. In addition, assessing and ranking watersheds prior to a CSP sign-

up allows NRCS to select the conservation practices, management activities, and enhancement activities that are best suited to the unique resource conditions and challenges in high-priority watersheds. Identifying high-priority watersheds and awarding contracts through CSP may provide a stimulus for better watershed planning and coordination of conservation activities, as well as allow Federal and State natural resource agencies to establish baseline environmental quality conditions and more effectively assess conservation effects in a given watershed. Finally, ranking and prioritizing watersheds according to NRCS regions allows the program to emphasize regional resource concerns and priorities. This process of ranking would be similar to the NRCS preferred approach except that applicants would not be prevented from applying to CSP if they are located in a low-priority watershed.

Under this alternative approach, a substantially larger number of producers may apply for CSP contracts than under the ''NRCS Preferred Approach.'' To effectively implement CSP using this alternative, NRCS may have to explore options including setting a higher bar for program eligibility, in order to reduce the agency's additional administrative burden of working with producers and processing applications.

2. Apportion the Limited Budget According to a Formula of Some Kind, for Example by Discounting Each Participant's Contract Payments Equally (*i.e.,* Prorate Payments)

Under this approach, NRCS would select all eligible applications for funding, but would reduce the level of funding for each eligible contract by an amount that would limit the total of all contracts to the budget limitation. This proration has the advantage of allowing all eligible applicants to become contract holders. Of course, the key disadvantage is that contracts would not be fully funded, and participants would receive potentially a small share of what a fully funded contract would provide while still requiring completion of the contract. Thus, they would have less incentive to undertake demanding conservation activities and CSP would not achieve its objectives. Complicating this approach is the problem that applicants would not know what share they would get until all contracts were approved, at which time they may find the contract undesirable. Thus it would be hard for NRCS to predict the ultimate expenditure of the program.

With the technical assistance funding cap of 15 percent, there would not be enough assistance available to assist all potential applicants and participants to complete the assessment and contract requirements to receive their payment.

3. Close Sign-Up Once Available Funds Are Exhausted (i.e., First Come, First Served)

In theory, NRCS could open CSP sign-ups and fund the first eligible applications submitted. This would place an unnecessary pressure on applicants to be first in line, and have no bearing on the expected conservation benefits of the contracts. In addition, it would be difficult for NRCS to know upon receipt of an application exactly what it would cost, mainly because detailed contract activities and the tiers of participation require some discussion and consideration by both the participant and NRCS field staff. Thus NRCS views this option as inappropriate and unworkable.

4. Limit the Number of Tiers of Participation Offered

NRCS believes that excluding tiers of participation, for example by offering only Tier III contracts, is neither consistent with the Act nor promotes delivering the greatest net benefits from the program. At each sign-up, NRCS will offer all three tiers of participation. It will award contracts based on the placement in enrollment categories regardless of the tier of participation.

5. Only Allow Historic Stewards To Participate—Only Those Who Have Already Completed the Highest Conservation Achievement Would Be Funded

This approach would severely constrain the program participation and would not require the use of new practice payments. There would also be a reduced level of technical assistance required since all the basic resource concerns would be addressed requiring no practice design and implementation. On the other hand, available funding within the contract cap could be focused on enhancements, including pilots and monitoring of results. A disadvantage of this approach would be that it may reduce participation from less capitalized, limited resource and beginning farmers and ranchers, and it may also reduce access to those producers who have not traditionally participated in NRCS programs.

Minimum Level of Treatment for Addressing Resource Concerns in CSP

As discussed before, NRCS is proposing to require that participants in CSP address resource concerns to a minimum level of treatment that meets or exceeds the resource quality criteria according to the NRCS Field Office Technical Guides in terms of land management and/or structural practices for each land use. Only land that meets or exceeds the required level of treatment for the identified resource concerns can be included in the CSP program for payment. For example, the rule proposes soil quality and water quality as national significant resource concerns. That means that each participant must address all water quality and soil quality concerns to the quality criteria level. In the case of participation in Tier I, such treatment can address a subset of the agricultural operation, as described in the statute.

NRCS may modify the requirements as new conservation practices and management techniques are developed and refined or as local conditions dictate. Participants in CSP would not need to conform to any new requirements not specified in their contract.

The term non-degradation standard as used in the CSP statute means the level of measures required to adequately protect, and prevent degradation of natural resources, as determined by the Secretary in accordance with the quality criteria described in handbooks of the Natural Resources Conservation Service. The term non-degradation is not used in this rule in order to avoid confusion with the regulatory compliance meanings used by EPA and other regulatory agencies.

In conditions where a resource concern is not pertinent, prevalent, or likely or for the land steward who has already met the minimum requirements for resource treatment, a participant may have to undertake few or no activities for enrollment in CSP. For example, where soil quality is already adequately addressed, NRCS will not require participants to undertake additional unnecessary soil management practices, as determined by the NRCS technical guides. It is the intent of NRCS that the required level of treatment will demand specific actions or companion practices (or in most cases a choice among actions and practices) only to the extent that those practices are required to meet prescribed resource conditions.

The Proposed CSP Application and Sign-Up Process

In preparation for the CSP sign-up, NRCS would receive public comment on the process and criteria used to select the eligible priority watersheds and enrollment categories used for selecting application for funding within the watersheds. Since this is a new capped

entitlement program, NRCS proposes to preserve program flexibility by not including all the specifics in the rule, but to seek additional public input over the different sign-up periods. The sign-up would be similar to CRP, and would allow NRCS the flexibility to address problems such as the local resource conditions deriving from a severe drought, habitat for threatened and endangered species (such as salmon in the Pacific Northwest), assisting fruit producers in changing their pesticide practices in the face of possible regulatory measures, and slowing surface runoff of nutrients in areas contributing to hypoxia and other water quality problems. As opposed to CRP, the criteria for application and selection would be transparent by defining through a public notice and posting on the web the watershed eligibility criteria and enrollment categories for funding.

NRCS will make the CSP applicant sign-up process as transparent as possible. Within priority watersheds, CSP targets the producers who meet high standards of conservation and environmental management on their operations. To apply for CSP, both the producer and their operation must first meet the basic eligibility criteria, including having the majority of the agricultural operation within a selected priority watershed. With the expected demand on the program, NRCS will ask potential participants to undergo a self-assessment process to determine if their operations can meet the standards of CSP and qualify for program participation. The self-assessment process would be completed using a self screening questionnaire for each land use to be enrolled. The screening questionnaire will ask the producer a series of resource management questions for each part of their operation. The questions will request information about the major activities necessary to meet the minimum requirements for water and soil quality, such as crop rotations, erosion control, tillage practices, nutrient and pest management, grazing practices, irrigation scheduling, use of buffer practices, and conservation practice record keeping. If the producer has successfully completed the screening process, they may submit an application.

Additionally, producers must prepare a benchmark inventory of their existing conservation treatment on the agricultural operation to document the operations resource condition on their operation. Once the producer has successfully met the eligibility requirements, completed the benchmark inventory, and completed other sign-up requirements, they may submit an application. Based on the resource inventory of benchmark conditions and a follow-up interview, NRCS will determine in which program tier (if any) the applicant could participate and the enrollment category placement.

The following CSP sign-up steps illustrate the determinations that NRCS would make for a sign-up:

(1) NRCS determines sequence of watersheds for participation based on available funding.

(2) NRCS determines the resource requirements, the criteria for enrollment categories, and any other additional criteria for the sign-up announcement in order to both optimize environmental performance and to ensure that statutory budget caps are not exceeded.

(3) NRCS announces the CSP sign-up and publishes the established CSP sign-up requirements.

(4) The applicant and their land and agricultural operation must meet the basic eligibility criteria described in subsections 1469.5 (a) and (b).

(5) The producer completes a self screening questionnaire for each land use to be enrolled.

(6) If the producer meets the basic eligibility requirements, successfully passes the screening questionnaire, completes a benchmark condition inventory, and satisfies the sign-up criteria including information about enhancement activities, the producer then develops an application to the program.

(7) The producer submits the completed CSP application to NRCS as described in the sign-up notice.

(8) NRCS determines whether the applicant and level of resource treatment meet the requirements established for the sign-up.

(9) If the applicant meets the requirements, NRCS places the applicant in a tier of participation and an enrollment category. NRCS informs the applicant of those determinations.

(10) Based on the available funding, NRCS selects applications within the enrollment categories as outlined in the sign-up announcement.

(11) If the applicant wishes to proceed as a CSP participant, NRCS conducts a follow-up interview, confirms the application information, and works with the applicant to complete a Conservation Security Plan.

(12) NRCS verifies the information and writes CSP contracts with the selected applicants. At this point, the applicant becomes a participant, or equivalently, a contract holder.

(13) The activities in the contract are undertaken as scheduled, and NRCS pays the appropriate sums to the contract holder.

CSP and Limited Resource Producers

NRCS is committed to making CSP accessible to limited resource farmers and ranchers, and seeks comment on how best to accomplish that goal. NRCS believes that this goal can and should be fully consistent with a commitment to produce the greatest net benefits with the program. One approach NRCS is considering would be to ensure that sign-up criteria allow for a priority enrollment sub-category that targets limited resource operations with particular conservation concerns. As indicated above, NRCS proposes to limit practice payments to below other USDA programs. However, the agency could consider allowing practice payments to be higher for limited resource producers, but below the statutory cap of 75 percent. NRCS welcomes other examples and suggestions for identifying conservation opportunities related to limited resource operations.

NRCS also welcomes comment regarding how other programs could best help limited resource and other less capitalized producers to become eligible for CSP, given the stewardship standards to participate in CSP.

CSP in Relation to Other NRCS Programs

Based on a 2002 Farm Bill concept of achieving the optimal environmental benefits while maintaining the economic viability of the agricultural operation, CSP is viewed as the potential integrator of all conservation programs within the Department. As described in the Secretary's ''Food and Agricultural Policy'' document, the portfolio approach is one that employs coordinated land retirement, stewardship incentives, conservation compliance, and regulatory assistance to achieve enhancements to both the agricultural sector and the environment. NRCS has worked to integrate CSP into a ''portfolio'' approach for conservation programs delivery within USDA. Through programs such as Conservation Technical Assistance (CTA), Conservation Reserve Program (CRP), Wetlands Reserve Program (WRP), Grassland Reserve Program (GRP), Environmental Quality Incentives Program (EQIP), and the Wildlife Habitat Incentives Program (WHIP), USDA is able to offer a suite of effective and voluntary programs to assist producers in their efforts to improve the environmental performance of agriculture.

NRCS is seeking comment on the opportunity to use CSP in a

collaborative mode with other programs to effectively leverage the Federal contribution to resource improvement and enhancement. Other governmental agencies, including State, local, and Tribal governments, as well as private and not-for-profit organizations, are playing an ever-increasing role in the delivery of technical assistance and in incentive programs for conservation. NRCS is exploring the opportunities for collaboration in these collective efforts and in developing public-private partnerships and joint programs to leverage Federal resources and improve program access and implementation. For example, broadening the support system for wildlife habitat development and management is an emerging challenge in program design and program delivery that can be augmented through collaboration and leveraging of funds. In the West, about 80 percent of the wildlife species depend on agricultural land to provide critical habitat, food, and cover. Improvements to the landscape—including wetlands, grasslands, flood plains, and riparian zones—through programs like CSP and other USDA conservation programs can help support biodiversity of wildlife and aquatic species and provide benefits in the form of recreation, hunting and other forms of agro-tourism. By focusing in priority watersheds and by proposing those participants agree to additional conservation treatment through enhancement, NRCS believes it will offer greater opportunities for wildlife habitat development and management. NRCS is seeking comment on how to implement a program that uses collaboration and leveraging of funds to achieve resource improvements on working agricultural lands through intensive management activities and innovative technologies.

NRCS believes that cost share programs such as EQIP, WHIP, and continuous CRP, as well as other Federal, Non-Federal, State, local and Tribal programs, should work together as complements with CSP, rather than substitutes. For example, this rule proposes that CSP will seek to minimize installation of structural practices by offering a substantially reduced list of eligible practices and lower cost-share rates. Alternatively, producers can install structural practices through other State or Federal programs, such as WHIP, and then qualify for a future CSP contract to help with the maintenance of those and other practices. In addition, unlike EQIP and WHIP, CSP will emphasize producers who have already met the resource concern's minimum level of treatment, encourage them to do more, and reward them for their exceptional effort. CSP differs from existing programs by focusing on a whole farm planning approach. Programs such as EQIP do not. In effect, the program will provide an incentive to seek cost share from other programs that are well targeted and part of a larger integrated planning approach. NRCS anticipates an increase in both quantity and quality of applications in other USDA conservation programs.

CSP could be a useful means for showcasing those producers who have achieved a level of conservation stewardship that can inspire others to reach a similar level of resource treatment. However, it is apparent with the budgetary cap on the program that only a portion of the agricultural community will become CSP participants. Participation will not be automatic. NRCS plans to develop a CSP application process that will direct individuals who do not meet the stringent requirements of CSP to another complimentary program offered by USDA or other state and local entities. This aspect of CSP implementation may have the effect of creating additional interest in programs such as CTA, EQIP, WHIP and the continuous CRP in situations where the producer is seeking technical or financial assistance to achieve the desired level of resource treatment and then to re-apply for CSP participation.

Environmental Performance, Evaluation and Accountability

NRCS intends to make CSP the most accountable conservation program it has ever implemented. In its pursuit of targeting the greatest resource benefits in a cost-effective manner, NRCS will endeavor to use CSP as an opportunity to learn more about the benefits and costs that derive from conservation practices. Careful evaluation and monitoring activities can show what works, what does not, and what it depends on. Through the program's enhancement provisions, participants will test intensive management activities and monitor the changes in environmental conditions, thus providing the data necessary for NRCS and other agencies to ground-truth its predictive models. NRCS can use these results to refine the targeting and activities of the CSP and other programs, and produce better overall program performance. Because of the limited program funding, NRCS is proposing that CSP require applicants to have achieved a high level of environmental performance to be eligible for CSP. The applicants must also be willing to achieve more, which will provide additional conservation and improved environmental performance.

Given the limited CSP budget, NRCS believes that one of the most important goals of CSP is to improve the tools it uses to target funds to the most effective conservation activities and the most pressing resource concerns. NRCS looks forward to working with enhancement project participants to develop approaches to monitor the environmental changes that derive from historic stewardship and new contract activities. All data would be handled consistent with the confidentiality provisions provided for in the Act. Results would be analyzed and portrayed in an aggregate fashion.

NRCS sees few downsides to this approach, but it does mean that some of the CSP resources will go to studying the effectiveness of conservation practices rather than installing them. NRCS strongly believes that in the long run this is a cost effective use of funds as one of the statutory enhancement categories. NRCS welcomes comments and suggestions for designing and implementing monitoring approaches, and suggestions as to what data and information would be most useful to ensure a high level of accountability for CSP.

By concentrating participation for each sign-up for CSP in specific watersheds and addressing priority resource concerns, NRCS will be better able to provide high quality technical assistance, adapt new technology tools, and assessment techniques to critically evaluate the program. Additionally NRCS will have the opportunity to evaluate the effectiveness of the treatment in a focused effort where it will be more practical and reasonable to relate to environmental performance.

Summary of Comments to the Advanced Notice of Proposed Rule Making

In developing this proposed rule, NRCS carefully considered its experience with conservation programs and the public comments it received through an advanced notice of proposed rule making (ANPR) found in 7 CFR, part 1469.

CSP raises policy issues that have not been addressed in other conservation programs. NRCS convened nine focus groups in November, 2002, to obtain public input related to CSP proposed rule development, and representatives from key agricultural and stakeholder groups were invited to participate. In addition, NRCS organized 5 workshops to obtain feedback on CSP and its implementation from producers and NRCS field staff. Following these

discussions NRCS issued an ANPR on February 18, 2003, to give the broader public an opportunity to comment on key issues that arose during the workshops and focus group sessions. Many State Conservationists held State Technical Committee or outreach meetings to discuss the ANPR and encourage input. This preamble summarizes the comments NRCS received from the ANPR (through April 3, 2003). In developing this proposed rule, NRCS carefully considered its experience with conservation programs, information from the focus group sessions, and the public comments it received through the ANPR.

This proposed rule lays out the approach NRCS believes will best achieve the vision of the Secretary and respond to the suggestions from the public. Some policy decisions taken in the rule are highlighted in this preamble for further public comment.

The Summary of Provisions has a section by section summary of the approaches NRCS used in the rule. A summary of comments on the key issues NRCS identified in the ANPR is as follows:

NRCS received 704 responses with 3027 specific comments concerning the development of this proposed rule as a response to the ANPR. Commenters included individuals; representatives of academic institutions; students; agriculture producers; State and local governments; Tribes, agricultural organizations; and, environmental and conservation organizations.

Although NRCS received comments from 46 States and the District of Columbia, the majority of the comments came from states in the Midwest. Respondents uniformly supported the concept behind the CSP legislation and the expenditure of Federal funds to implement the program.

1. Resource concerns and ''significant'' resource concerns. The Act requires conservation security plans to address one or more ''significant'' resource concerns. NRCS explained in its ANPR that resource concerns may be as general as soil erosion or water quality or as specific as soil erosion by water or ground water quality. Although the status and changes in some resource concerns cannot be directly measured, the NRCS Field Office Technical Guide (FOTG) provides the basis for guidance and specifications for addressing specific resource concerns and tools for measurement.

NRCS received and evaluated 153 comments on this issue. At least 54 respondents named resource concerns that NRCS should deem significant. Preservation and/or restoration of native prairie were specified as significant resource concerns by 33 respondents, making it the most-cited resource concern. The next most-cited resource concerns were soil and water-related issues, including: soil quality improvement, soil erosion control, water conservation, water quality improvement, protection of public drinking water supplies, and the dewatering of streams, with water quality overall being the issue respondents emphasized most. Responders also suggested the following significant resource concerns: pest management, nutrient management, protection of fish and wildlife habitat, noxious weeds, and protection of pollinators. At least 70 percent of the respondents addressed who should determine which resource concerns were significant. Twenty-two respondents said the Federal government should set national priorities, and then allow State and local governments to add additional concerns to the list. Ten respondents suggested determining resource concerns on a State-by-State basis via the State Technical Committees. Seven respondents said States should identify the overarching resource concerns, and then allow local working groups to define the resource concerns in a more specific way. Finally, sixteen respondents proposed that local working groups be given the authority to determine significant resource concerns. The majority of the respondents favored giving responsibility to either the State Conservationist (with State Technical Committees input), or to both the State and local levels (with the State Technical Committee and the local working groups input).

NRCS evaluated whether significant resource concerns should be designated by the national, State or local level and, if determined nationally, what should be those specific resource concerns. NRCS proposes to designate water quality and soil quality as nationally significant resource concerns. NRCS is emphasizing water quality and soil quality as nationally significant resource concerns because of the potential for significant environmental benefits from conservation treatment that improves their condition. In addition, NRCS has a long history of developing and applying sound science and technologies that effectively address soil erosion and water quality problems. Public concerns about soil as a natural resource have transcended well beyond the traditional measures for controlling soil erosion. In recent years, concerns about air and water quality have become increasingly important to the country as a whole. To address these environmental goals and to help secure our Nation's ability to produce food and fiber we must now go beyond soil erosion control and direct our efforts to improvements in soil quality. Research shows that the most practical way to enhance soil quality and function is to achieve better management of soil organic matter or carbon. Soil organic matter is especially important in mineral soils, because it can be easily altered by agricultural operations and land management practices on both cropland and grazing land.

Soil organic matter enhances water and nutrient holding capacity and improves soil structure, thereby holding nitrogen, phosphorus, and pesticides in place and helping to keep them out of surface water. Intensive management directed at improving soil quality has many ancillary improvements to environmental quality and has the ability to reduce the severity and cost of natural disasters such as drought, flooding, and disease. In addition, increasing soil organic matter levels can have many positive effects, including:

- Reducing atmospheric carbon dioxide levels that contribute to climate change.
- Reducing dust, allergens, and pathogens in the air.
- Sediment and nutrient loads decline in surface water as soon as soil aggregation increases and runoff decreases.
- Improved ground and surface water quality due better structure, infiltration, and soil biology make soil a more effective filter.
- Crops and forages are better able to withstand drought when infiltration and water holding capacity increase.
- Organic matter may bind pesticides, making them less active. Soils managed for organic matter may suppress disease organisms, which could reduce pesticide needs.
- Crop health and plant vigor increase when soil biological activity and diversity increase.
- Wildlife habitat improves when residue management improves.

Water quality concerns include a wide variety of potential contaminants from agricultural operations including: sediment, nutrients, pesticides, salts and pathogens. Runoff carries soil particles to surface water resources, such as streams, rivers, lakes and wetlands. Nutrients can enter water resources from runoff, point source contamination or by leaching. Pesticides are delivered to water resources similar to the transport mechanisms for nutrients—through runoff, run-in, and

leaching. In addition, pesticides can become attached to soil particles and deposited into water bodies with rainfall and other forms of precipitation. Irrigation return flows often carry dissolved salts from cropland and pastures, as well as nutrients and pesticides, into surface- or groundwater. High levels of salinity in irrigation water can reduce crop yields or limit crop growth to an unacceptable level.

NRCS is proposing to allow participants to address additional resource concerns through certain types of enhancements activities. Enhancement activities are expected to produce additional environmental benefits through additional management activities such as specific actions regarding pest management or nutrient management and by addressing additional concerns such as soil erosion control, water conservation, noxious weeds, and the protection of pollinators or protection of fish and wildlife habitat. This proposal ensures that every State will address national priorities. It will allow States to address other significant natural resource issues through the identification of local resource concerns through enhancement activities. NRCS requests additional public comment on the use of nationally significant resource concerns.

2. Minimum requirements for each tier. Each of the three CSP tiers specifies:

(1) Eligibility criteria for participants;

(2) the payments participants can receive; and

(3) the conservation activities the participants must maintain or undertake as a condition of their CSP contracts.

Section 1238A(d)(6) of the Act requires the Secretary to establish minimum requirements for each of the three tiers of participation. The Act allows the minimum requirements to be as discrete as a list of specific practices or as general as a bundle of conservation practices and activities that achieve a desired resource outcome. The Act requires at least a minimum level of treatment which has been further defined in this rule as significant resource concerns and quality criteria in section 1469.4.

In the ANPR, NRCS asked for specific comments on the minimum requirements for each tier, and whether the requirements should apply to all contracts nationally. NRCS received 572 comments on this issue, of which at least 480 were identifiable as ''form'' responses from the sustainable agricultural community. A majority of the respondents endorsed minimum requirements that ''reward strong environmental performance.'' There was considerable support for minimum requirements that result in improvement of the natural resources beyond the requirements in the Act. Some degree of support exists as well for use of practice bundles or conservation systems rather than individual practices. A small number of commenters also suggested favoring producers who have already obtained a conservation plan and implemented it. Comments were split between requiring minimum national requirements for all CSP contracts and CSP requirements being determined at regional, State, or local levels. Several of those who recommend minimum national requirements suggest that NRCS allow State and local interests to add to the list of national requirements. As indicated above, NRCS has proposed to set national eligibility requirements to reward producers who have shown the initiative toward strong environmental performance on their land. Water quality and soil quality are designated as nationally significant resource concerns. NRCS is proposing that tier-one applicants address both water quality and soil quality resource concerns to the minimum level of treatment as a condition of eligibility for the enrolled portion of the agricultural operation. NRCS is proposing that tier-two applicants must address soil and water quality resource concerns on their entire agricultural operation up to the minimum level of treatment as a condition of eligibility and then address an additional resource concern of their choice by the end of the contract period. Tier-three applicants would address all resource concerns on their entire agricultural operation up to the minimum level of treatment as a condition of eligibility. All tiers of participation would be required to address additional activities as described in the sign-up announcement or the enrollment category placement.

NRCS proposes in Section 1469.5 to require a minimum level of treatment for the significant resource concerns used for program eligibility and tier contract requirements that will result in conservation treatment that meets or exceeds the quality criteria. The criteria will be based on accomplishment of a higher level of management intensity (*e.g.* continuous no-till rather than seasonal conventional tillage) rather than depending solely upon the installation of practices. This proposal requires that the agency further define ''management intensity'' for the various resource concerns and the degree to which the conservation treatment exceeds the quality criteria. Specific management intensity activities will be set at the National level and tailored for state use by the State Conservationist with advice of the State Technical Committee.

3. Payment eligibility. The Act requires the Secretary to describe the particular practices to be implemented, maintained, or improved as part of the program. The Secretary can determine which practices receive payment. Although the Act provides for maintenance payments on existing practices and new practice payments on structural practices, the Act does not require that participants receive maintenance payments for all the practices needed to meet the required quality criteria or cost-share payments for all practices installed. NRCS sought comment regarding which practices and activities should be eligible for payment, and whether any priorities should be established for payment. NRCS received 160 comments on this issue, of which 27 of these responses were identifiable as ''form'' responses. A small majority of respondents supported the full range of conservation practices and activities in the NRCS Field Office Technical Guide, with some advocating innovative practices not already in the field guides. A nearly identical number of respondents support the selection of eligible practices and activities on the basis of experience at State or local levels and/or good science. A third and much smaller group of respondents support the prioritizing practices for funding, for example, a point system, in order of their relative effectiveness. Some commenters noted a possible redundancy between CSP and other programs (such as EQIP and WHIP) that include cost-share payments for installing structural practices.

This proposed rule attempts to avoid program redundancy by focusing CSP on a specific list of eligible practices, for both the new and existing practice payments, rather than the complete laundry list of available practices and promoting intensive management activities as enhancement payments. State Conservationists would have the ability to tailor the lists to assure they meet the pressing natural resource needs of a portion of their State or a multi-State area. NRCS has proposed to manage all of its mandatory programs using a portfolio approach to reduce redundancy in program areas. NRCS believes that management of USDA conservation programs using a portfolio approach will help direct applicants toward the programs that best fits their needs, thereby maximizing the conservation and improvement of natural resources.

4. Balance of payments across base, maintenance, and enhancement. Section 1238C(b)(2)(B) of the Act restricts the maximum base payment to a percentage of the total contract payment limitation. Base payments can be no more than 25 percent of Tier I contracts and 30 percent for Tiers II and III. NRCS asked for comments on the balance between the base payment, maintenance payment, and enhancement payment that would best reward good stewards and obtain additional conservation benefits. NRCS received 382 comments on this issue, of which 309 are identifiable as ''form'' responses. Consensus favored somewhat less emphasis or lower payment rates for the base payment component and greater emphasis or higher payment rates for maintenance cost-share payments. However, some supported a reasonable enhanced payment component. Views differed regarding who should determine the balance of payments, as some support giving State or local interests input in determining the ultimate balance, particularly for maintenance cost-share and enhanced payments, while others supported a national directive.

The proposed rule sets base payments to no more than 25 percent of the contract cap in Tier I, and no more than 30 percent of the contract cap in Tier II and III. It provides for a methodology to set an appropriate rate as allowed by the statute. This rate will be lower than the national rental rates through the use of a consistent reduction factor. Maintenance payments have been redesignated as ''existing practice'' payments and will be determined by the State Conservationist based on a national list tailored to match the needs of the locality. To increase additional net benefits, NRCS will be requiring a high level of additional conservation performance for eligibility and through the enhancement and contract requirements provisions of the program. Tier I and Tier II participants would be required to address additional significant resource concerns on their agricultural operations up to the NRCS required level of treatment. Some of the practices necessary to address those resource concerns might be funded with a new practice payment in CSP, although at a lower rate than other NRCS programs. Some enhancement activities would also require participants to pursue intensive management activities that would exceed the NRCS minimum level of treatment with the potential to provide substantial improvement to the condition of the resources. NRCS believes this proposal encourages all participants, regardless of the tier of participation, including limited resource and beginning producers and small farms, to pursue a higher level of conservation and to participate in locally led conservation priorities, carry out record keeping, assessment activities and on-farm demonstration projects.

5. Definition of Agricultural Operation. The Act refers to ''agriculture operations'' without defining the term. NRCS has evaluated various definition alternatives, and are determined to seek public comment to evaluate the most appropriate definition considering the various forms of ownership and landowner-tenant relationships. NRCS received 76 comments on this issue, with another 27 suggested that an agriculture operation include all land owned and operated by an individual or entity, and another 25 respondents favored the use of a Farm Service Agency (FSA) number system to define an agriculture operation. A small number of respondents suggested that an agriculture operation should consist of owned land only, with at least one of those individuals wanting to narrow the definition further by limiting the definition to that land used or managed in a similar fashion.

Consistent with GPCP, NRCS proposes in Section 1469.3 to define ''agricultural operation'' as ''all agricultural land, and other lands determined by the Chief, NRCS, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, where the participant provides active personal management of the operation.'' NRCS believes this proposed definition meets the intent of the legislation. NRCS also believes that this definition is more clear, better promotes operation-wide conservation, and could reduce the number of contracts in which a participant can engage. Active personal management as defined in the rule ensures that the participant personally provides day-to-day conservation management decisions essential to provide the intensity of management necessary to achieve the goals of the program. A participant would not need to own eligible land, but would need to demonstrate control of the land for the life of the CSP contract.

This definition results in the potential for multiple tracts and farms to be within one operation and reduces the potential number of piece-meal contracts feared by some respondents. NRCS believes that the value of making conservation management decisions based on resources concerns is more important than fitting CSP to the design of existing commodity programs. This definition supports the many respondents who desired a program that actually benefits those who work the land.

6. Eligible land. In Section 1238A(b)(2), the Act specifies eligible land as cropland, grassland, improved pasture land, prairie land, rangeland, land under the jurisdiction of an Indian Tribe, as well as forestland that is an incidental part of the agricultural operation. NRCS sought comments regarding which other areas of a farm or ranch should be included in the agriculture operation, and thus be treated land under the contract. Such lands may or may not be eligible for payment, but they could be included in requirements for participation at a given Tier level. NRCS received 98 comments on this issue. Nearly two-thirds of the respondents said that the land eligible for payment should include all areas of a farm or ranch, except for those areas that are irrelevant to agricultural operations, such as home lawns and driveways, and infrastructure elements for which no NRCS standard exists. All respondents supported the inclusion of non-cropped areas, such as riparian zones, turn rows, feedlots, buildings, and related facilities. One-fifth of the respondents recommended including all areas of a farm or ranch, including non-cropped areas, as eligible land, except for buildings, equipment storage facilities, and similar parts of farm and ranch infrastructure.

In Section 1469.5(b), NRCS proposes to include non-cropped areas, such as turn rows or riparian areas that are incidental to the land use within the land area for purposes of calculating base payments. For Tier III contracts, NRCS proposes to require that participants treat to the quality criteria level all of their agricultural operation's land, including farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. This approach ensures that a Tier III participant's entire agriculture operation meets the quality criteria for the identified resource concerns and that its management is consistent with the NRCS planning process. The approach also ensures that Tier III operations will be model conservation enterprises.

NRCS is also proposing in Section 1469.5(b), for the purposes of CSP, that forestland offered for inclusion in a CSP contract as an incidental part of the agricultural operation must meet the following guidelines:

Forestland includes land that is at least stocked at least 10 percent by single stemmed forest trees of any size which will be at least 4 meters (13 feet) tall at maturity, and when viewed vertically, the tree canopy cover is 25 percent or greater for the offered conservation management unit. Also included in this definition are areas bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland, as determined by NRCS) and not currently developed for non-forest use. For classification as forestland, an area must be at least one acre and 100 feet wide. Therefore, in order for tree-covered grazing area to be eligible for a CSP contract, it must be stocked with less than 10 percent single stemmed trees of any size that will reach a mature height of at least 4 meters, and when viewed vertically, have a tree canopy cover of less than 25 percent—for the conservation management unit. NRCS is seeking comment on the usefulness of these guidelines for managing the questions relative to inclusion of incidental forested lands in CSP contracts.

Another issue that NRCS seeks guidance on is the question of what level of treatment should be required for the forestland that is included in the CSP contract as land incidental to the agricultural operation. NRCS is seeking input on whether forestland should meet the NRCS quality criteria requirements as specified in its technical guides for areas within a Tier III contract, but not eligible for payment.

7. Base payments. In Section 1238C(b)(1)(A), the Act requires the Secretary to make base payments as part of a conservation security plan using either the 2001 national rental rate for a specific land use or another appropriate rate that assures regional equity. NRCS received 85 comments regarding the base payment calculation, and the majority of respondents rejected using national rental rates for calculating base payments. All respondents preferred a calculation that used local data, although there was no consensus on which specific local data NRCS should use. Suggestions included land values, cash rents, soil type, land use, and crop productivity. Section 1469.23(a) in the Summary of Provisions and Additional Request for Comments describes how these comments were addressed.

The Act requires the use of rental rates for the 2001 program year. NRCS proposes the use of regional and local data, plus ''control data'' procedures to ensure consistency and regional equity. The average 2001 rental rate for the base payments will be based on National Agricultural Statistics Service (NASS) data from the regional or smaller level, where available, and other data such as other USDA program rental rates will be referenced, for quality control and consistency checks. When rates within a State vary widely, NRCS will use local data to set the average rental rate.

8. Enhancement payments. The Act provides for an enhancement payment if an owner or operator does one or more of the following: (a) Implements or maintains practices that exceed minimum requirements; (b) addresses local conservation priorities; (c) participates in on-farm research, demonstration, or pilot projects; (d) participates in watershed or regional resource conservation plan; or (e) carries out assessment and evaluation activities relating to practices included in a conservation security plan. Enhancement payments are meant to ensure and optimize environmental benefits. NRCS sought comments regarding the calculation and determination of program enhancement payments to ensure the program's statutory objectives are met. NRCS received 106 comments, but there was little consensus among respondents on this issue. Generally, people want enhancement payments to improve resource conditions and conservation performance: 8 respondents want enhancement payments tied to some actual measure of conservation performance; 14 suggested that enhancement payments be tied to State and local priorities or to a watershed, regional, or other landscape-type plan; 8 want State technical committees to set the schedule for enhancement payments; 8 others want the payments based on the cost of a practice or the time spent implementing a practice; 5 wanted a specific schedule of payments set up for such actions as the implementation of certain conservation systems or for research, demonstration, and monitoring; and 6 proposed not making enhancement payments. Some tied enhancements to a percentage of the base payment made; others suggested a percentage of the overall CSP payment. Section 1469.23(d) in the Summary of Provisions and Additional Request for Comments describes how these comments were addressed.

Section 1469.23 proposes that State Conservationists, with advice from the State Technical Committee and local work groups, will determine the list of activities that qualify for enhancement payments. The activities must reflect national priorities and be consistent with the rule. Cost schedules for enhancement activities would be determined at the local level. This approach customizes payments at the State level and allows States to encourage activities they believe would yield the most environmental benefits. NRCS would not pay producers more than is necessary to carry out the enhancement activity. NRCS seeks additional comments on the construction and calculation of enhancement payments.

9. Contract limits. The Act does not limit the number of contracts a participant can have, nor does it provide for an overall program payment limitation per producer. Considering that program funds may be limited, NRCS sought public comment regarding whether limitations should be addressed in the regulation. NRCS received 419 comments on this issue, nearly all respondents favored the contract payment limits set in the Act and most of the respondents registered support for a one-producer, one contract approach. A few left some leeway to go to more contracts or even higher payment limits if the program were implemented as an entitlement. NRCS is seeking additional comments on the idea of a one-producer, one-contract approach brought up by the respondents.

Seven respondents expressed support for a Farm Service Agency farm-number system approach; 13 supported no limits on contracts or payments; 36 supported no limits on contracts, but a limit on payments at the $45,000 level. A small number of respondents commented that the limit should be raised to $50,000.

Six respondents did not want to be classified as an entity because of the perception that the Adjusted Gross Income (AGI) limitation would apply to Indian Tribes. Under 7 CFR 1400, Indian Tribes are exempt from the AGI qualifications.

NRCS determined to use the contract limits provided in the Act and not to limit the number of contracts held by any participant. However, NRCS's definition of an agricultural operation encourages producers to submit a single contract for all eligible land, rather than separate contracts, to the extent such land represents a cohesive management unit.

10. Fair treatment of tenants. In Section 1238C(d), the Act requires that the Secretary provide adequate safeguards to protect the interests of tenants and sharecroppers. Section 1238C(b)(2)(D) provides that to be eligible for payment the individual or entity make contributions to the operation that are commensurate to his share of the proceeds of the operation. NRCS sought public comment to ensure

payments are shared between owners and operators on a fair and equitable basis. NRCS received 72 comments on this issue. Respondents raised concerns about the impact of CSP provisions on owner/operator relationships, including changes in rental rates or changes in operators. Eleven respondents supported splitting payments on the basis of how commodity program payments are split in a general locale; 22 supported letting landowners and operators negotiate the split; 17 suggested splitting payments on the basis of the monetary investment made and work performed to implement a Conservation security plan; 7 supported making all payments to landowners only; 3 supported making all payments to tenants on the assumption that tenants are doing most of the work and making most of the financial investment; and 8 supported using EQIP, or some other existing program model, to resolve this issue. Generally, the comments favored letting the parties on the ground deal with this issue rather than have USDA determine the outcome.

NRCS has determined that tenants and landowners will receive appropriate payment shares based on their contributions to the conservation management and land stewardship as determined by them. Before NRCS will approve a contract, tenants and owners must agree to their interest in the payments for both parties as documented in the program contract.

11. Ownership and Control. The Act requires a minimum contract length of 5 years. Many landlord-tenant relationships are of a shorter duration. NRCS sought comments about whether eligible participants need to have control of the land for the contract period. NRCS received 80 comments, with respondents divided over the question of requiring control of the land for the length of the CSP contract (*e.g.,* 5 years). Thirty-five respondents supported requiring applicants have control, or reasonable assurance of control for the life of the CSP contract. However, of these, 15 would allow the contract to be modified, cancelled, or have a succession of interest clause added. Six respondents specified the landowner should be the main applicant. Thirty-four respondents did not support a requirement for CSP applicants to have control of the land for the life of a CSP contract. This group desired the program to be more flexible to allow all tenants with short-term leases access to the program. Eight others recommended that CSP contract lengths vary with the lease arrangement.

Consistent with EQIP, NRCS proposes that the applicant must show control of the land for the length of the contract period either through a lease or proof of a long-standing relationship. Recognizing the frequent turnover of rented land in some parts of the country, it may be difficult to have a stable land base to satisfy this contract requirement. If the applicant cannot show control of a parcel of the agricultural operation for the life of the contract, that part of the agricultural operation does not qualify for any payment component. However, it is required to be maintained at the same conservation standard as the rest of the operation, and the land is considered within the area of the contract. Situations that result in noncompliance with requirements of the contract will be handled as a contract violation according to Section 1469.25.

12. Program focus and prioritization. In order to meet the Administration's goals to maximize the conservation and improvement of natural resources, NRCS believes it is necessary to prioritize assistance offered through CSP. Since the law does not provide for a funding or acreage cap, NRCS sought comments on ways to focus the program. A number of suggestions were offered to the public on ways the program could be limited.

NRCS received 568 comments on this issue, with 493 considered ''form'' responses. Commentators overwhelmingly supported the entitlement status of the CSP and the program being made available to producers nationwide. There was strong support, secondarily, for prioritizing applications based on the CSP tier arrangement with Tier III contracts given preference. There appeared to be mixed reaction to how allocations should be made to the State and/or local level. There was more support to allocate funds using a formula based upon measurable environmental need, rather than other options NRCS considered, including: limiting the application process to only the projects with the highest conservation potential; conducting a random lottery-like process for participation; limiting the program to specific geographic areas or a certain number of States; conducting a national or State level request for proposal process; or limiting sign-up to one national or State identified natural resource concern.

NRCS has addressed the constraint of program funding by defining eligibility criteria that limit program participation, and establishing a system of conservation enrollment categories that would enable the Secretary to prioritize funding to eligible applicants consistent with sign-up funding allocation. NRCS is proposing to use watersheds as the mechanism for focusing CSP participation in high-priority areas of the country. Watersheds could be selected to focus on national and region-level environmental quality concerns. NRCS would nationally rank watersheds based on a score derived from a composite index of existing natural resource, environmental quality, and agricultural activity data. Applicants would be placed in a particular enrollment category based on their level of conservation commitment and other factors to be announced during sign-up. All applicants who meet CSP eligibility criteria and are placed in a category selected for funding in the sign-up would receive a payment consistent with their contracts. Watersheds ranked for potential CSP enrollment will be announced in the sign-up notice.

13. Energy as a natural resource concern. The Act identifies energy as a resource concern in Section 1238A(a). NRCS does not presently have quality criteria standards for energy to analyze of the effect of the planned conservation activities. NRCS sought comments on how energy could be incorporated into the program requirements. Although 103 comments were received, no comments offered specific approaches for implementing this provision. Most respondents did not address the questions asked in the Advanced Notice of Proposed Rulemaking. However, 62 supported including energy as a resource concern in the program. One respondent noted that energy conservation was a clear objective of the CSP, but recommended that it did not warrant designation as a separate resource of concern, with the subsequent development of a set of quality criteria similar to those for soil, water, air, plants, and animals. This commentator suggested that energy conservation be addressed under the umbrella of one of the existing primary resources of concern. Four others recommended waiting for more funding before including energy as a resource concern, and 36 had other general energy-related comments.

There are virtually dozens of opportunities to impact energy as a resource through the adoption of conservation practices and systems and by applying intensive management activities. Agricultural operations can impact energy use efficiency directly by reductions in fuel use during planting, harvesting cycles, and pumping irrigation water, or indirectly through reductions in fertilizer and pesticide applications. For example,

implementing a no-till residue management system can save significant amounts of fuel that otherwise is consumed by equipment traveling across the field. Irrigation water management can reduce consumption of fuel or electricity used for pumping, as well as the quantity of water applied.

NRCS proposes to address energy in the following ways: (1) allow State and local priorities to make energy conservation activities eligible for enhancement payments; and (2) revise or develop energy-related practice standards in the FOTG (*e.g.* biomass production, wind energy generation, etc.). NRCS will ensure that the FOTG contains conservation practices that address energy production, energy conservation and energy efficiency. NRCS wants to encourage innovation and involvement of the State Technical Committee and local work group. This proposed rule enables NRCS to adopt either or both of these options.

14. Management payments. The Act authorizes payments for conservation practices that require planning, implementation, management, and maintenance. NRCS considered whether the management payment should more heavily recognize a participant's equity in capital or a participant's engagement in intensive management, and we received 87 comments on the issue.

Ten respondents addressed the tension between the return to management versus the return to capital. Generally, the respondents said the bulk of the CSP management payment should recognize the time and cost of applying management skills. Three stated that this issue should be resolved between the landowner and the tenant. Another respondent suggested that the return to capital was the preservation and enhancement of land productivity. Nearly all respondents recommended CSP help compensate producers for their time and management skills in implementing management intensive practices. A third of all respondents recommended paying only for land management practices. A few respondents recommended paying only for the return on equity in capital improvements. In the ''Summary of Provisions and Additional Request for Comments'' Section 1469.23, Program Payments describes how these comments were addressed.

15. Quality assurance. The Act provides limited guidance to NRCS regarding how the program's performance should be monitored or how NRCS should identify contract violations. NRCS sought public input on how to ensure that Federal funds are spent wisely, and NRCS received 105 comments. In general, respondents felt strongly that USDA should monitor contract compliance. They pointed out the need for spot-checks, self-certification, and enforcement activities to ensure program performance. However, respondents did not agree on a preferred frequency of the checks or which person(s) should be responsible for carrying out the contract compliance activities.

Respondents offered some useful ideas on how to measure and monitor program performance. For example, some commentators suggested the use of a combination of reference sites, scientific models, and GIS technology to carry out monitoring and evaluation. Monitoring could occur at the farm and ranch level, as well as at the watershed level or some other geographic area.

Specific monitoring and compliance approaches are not laid out in this proposed rule.

Summary of Provisions and Additional Requests for Comments

The following discussion summarizes the provisions in each section of the proposed rule, explains the alternatives NRCS considered, justifies the NRCS preferred approach, and requests public comment on specific issues.

Section 1469.1 Applicability

The rule identifies the initial program year and extent of the program's availability. NRCS has the authority to begin accepting applications during calendar year 2003.

Section 1469.2 Administration

This section provides that the CSP will be administered by the Chief of NRCS, who is a Vice President of the Commodity Credit Corporation. It also provides general information on program administration.

As discussed above, one important aspect of CSP administration is the procedures NRCS will follow if NRCS receives more eligible applications than it can fund.

As noted above, NRCS is specifically seeking comment on how to select the contracts of the pool of eligible producers to best serve the purpose of the program.

Section 1469.3 Definitions

This section sets forth definitions for terms used throughout the part. Most definitions are derived from the statute, NRCS technical guidance documents, or regulations for other programs. This rule provides important clarity, particularly where the Act lacks specificity.

The most significant definition is ''agricultural operation,'' because the term defines the land area that can or must be enrolled in CSP contracts under the three tiers of participation. NRCS believes its preferred approach to defining an agricultural operation will help create a cohesive conservation unit over which the stewardship benefits are achieved. In particular, the definition is instrumental in separating Tier I from Tier II and Tier III applicants. The term ''agricultural operation'' is used twice in Title II of the Act with different meanings. This definition here is not the same as the term used in the EQIP Ground and Surface Water Conservation program which refers only to specific fields under irrigation used to calculate a net savings for water conservation purposes. CSP definition covers the entire agricultural operation whether irrigated or not and is used as a tier criteria rather than to calculate a net savings for water conservation purposes.

NRCS's approach to defining agricultural operation for the CSP represents a careful balance. If the definition were to allow a producer to reconstitute or split holdings, the producer could submit numerous CSP applications for what is really a cohesive production unit. If the definition were to be overly broad, a producer's legitimately unique operations would be inappropriately encompassed into one ''agricultural operation.''

NRCS evaluated whether the agricultural operation should be: a unique owner/operator relationship; all land in a county or contiguous land in which the client provides active personal management of the operation; historical administrative designations; or defined by the participant.

In particular, NRCS compared the Farm Service Agency (FSA) numbering system to the approach NRCS uses in the Great Plains Conservation Program (GPCP). Whereas FSA's system bases farm numbers and the associated land on its administration of commodity programs, NRCS believes that agricultural operations under CSP should be based on resource concerns or conservation management. Moreover, the FSA numbering system does not apply to many potential CSP participants who do not participate in commodity programs, such as ranchers and specialty crop producers. NRCS has found that the definition of ''agricultural operation'' in the GPCP to be satisfactory for administering the program and easy for participants to understand.

Consistent with GPCP, NRCS proposes in Section 1469.3 to define ''agricultural operation'' as ''all agricultural land, and other lands

determined by the Chief, NRCS, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, where the participant provides active personal management of the operation.'' NRCS believes that this proposed definition meets the intent of the legislation. It is clear, better promotes operation-wide conservation, and could reduce the number of contracts in which a participant can engage. Active personal management as defined in the rule ensures the participant personally provides day-to-day conservation management decisions essential to provide the intensity of management necessary to achieve the goals of the program. NRCS believes that the value of making conservation management decisions based on resources concerns is more important than fitting CSP to the design of existing commodity programs. This definition supports the many respondents who desired a program that actually benefits those who work the land.

For this rule, the Secretary has determined that the minimum level of treatment required to address resource concerns for CSP program eligibility will meet, and in most cases exceed, the quality criteria standard in order to optimize the level of environmental benefits and environmental program performance. The term non-degradation standard is defined in the statute, but is not used in the proposed rule. Non-degradation standard as used in the CSP statute means the level of treatment measures required to adequately protect, and prevent degradation of, one or more natural resources, as determined by the Secretary in accordance with the quality criteria described in handbooks of the Natural Resources Conservation Service. The term non-degradation is not used in this rule in order to avoid confusion with the regulatory compliance meanings used by the Environmental Protection Agency and other regulatory agencies.

Benchmark condition inventory is the documentation of the resource condition or situation pursuant to Section 1469.7(a) that NRCS uses to measure an applicant's existing level of conservation activities, to determine program eligibility, to design a conservation security contract, and to measure the change in resource conditions resulting from conservation treatment. This is a common part of the NRCS conservation planning process.

Management intensity is the degree and scope of actions or activities taken by a producer, which are beyond the minimum requirements of a management practice and which qualify as additional effort necessary to receive an enhancement payment. Management intensity covers a broad range of conventional and emerging technologies that take advantage of new developments in soil, water, nutrient, and pest management. These conservation technologies provide a basis for implementation of CSP enhancement payments. Management activities can create powerful opportunities for producers to achieve increased levels of environmental performance and benefits.

Resource concern refers to the condition of natural resources that may be sensitive to change by natural forces or human activity. NRCS identifies problems and opportunities relating to resource concerns by using predictive models, direct measurement, or observations in relation to client objectives. Resource concerns include the resource considerations listed in Section III of the FOTG, such as soil erosion, soil condition, soil deposition, water quality, water quantity, animal habitat, air quality, air condition, plant suitability, plant condition, plant management, and animal habitat and management.

Section 1469.4 Significant Resource Concerns

This section proposes water quality and soil quality as nationally significant resource concerns that will be addressed in all contracts and allows the Chief to designate additional nationally significant resource concerns for a given sign-up. NRCS is specifically seeking comment on the designation of nationally significant resource concerns.

NRCS evaluated whether significant resource concerns should be designated at the national, State, or local level and, if determined nationally, what those specific resource concerns should be. In Section 1469.4, NRCS is proposing water quality and soil quality as national significant resource concerns. Resource concerns and quality criteria for their sustained use rely on the existing NRCS technical guides and conservation planning guidance and policies. Even though not all operations have problems to solve in the area of water quality and soil quality, most do have opportunities to improve the condition of the resource through more intensive management of typical soil quality or water quality conservation activities such as conservation tillage, nutrient management, grazing management, and wildlife habitat management. Operations that have already treated soil and water quality to the minimum level of treatment could increase the management intensity applicable to those resource concerns through enhancement activities. This rule proposes that every contract address national priority resource concerns. At the announcement of sign-up, the Chief may designate additional resource concerns of national significance. Additionally, State and local concerns would be addressed through the enhancement activities undertaken by CSP participants.

NRCS is emphasizing water quality and soil quality because it believes such emphasis will deliver the greatest net resource benefits from the program, as noted in the above discussion. In addition, NRCS has a long history of developing and applying sound science and technologies that effectively address water quality and soil quality problems and conservation opportunities.

Section 1469.5 Eligibility Requirements and Selection and Funding of Priority Watersheds

This section provides the requirements for participant and land eligibility, outlines the requirements for the three tiers of CSP participation and proposes the selection for funding of priority watersheds.

Eligible land is private or Tribal working lands (cropland, orchards and vineyards, pasture, or rangeland) that is in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR part 12. Land is placed in general use categories for the purpose of calculating the base payment and identification of appropriate natural resource concerns and treatment needs, such as cropland, pasture, and rangeland. Decisions about the proper use and management of the resources that support agricultural operations are made on a daily basis. In some instances a management decision may be made that causes a major shift in land use, such as changes from a less intensive use or from a more intensive land use. For example, a dairy operation that is using cropland used to grow forages may convert to a rotational grazing system. This reduction in land use intensity has many environmental benefits associated with it. This land use conversion also changes the base payment basis from a cropland (higher) payment per acre rate to a pasture (lower) payment per acre. NRCS is asking for comment on how this situation can be addressed in the rule.

The applicant must have an interest in the farming operation as defined in 7 CFR 1400.3 and must have control of the land for the life of the proposed contract period. Where the land owner does not have control of the land for the life of the CSP contract, such as where

continuity of the agricultural operation fluctuates from year to year or where leases are not maintained, NRCS proposes that the participant practice the same level of conservation treatment on all land under their control on a year to year basis even though they may not have control on each parcel for the life of the CSP contract. Concerns have been expressed through the ANPR process that producers not accept stewardship payments while at the same time operating land outside the CSP contract at a less-than-acceptable level of treatment. NRCS is seeking comments on this provision.

NRCS proposes to include non-cropped areas, such as turn rows or riparian areas that are incidental to the land use in the land area, for purposes of calculating base payments.

The Secretary is authorized to set eligibility criteria and contract requirements. The proposed rule sets the required level of treatment to address resource concerns that each applicant must meet for program eligibility, according to NRCS technical guides, and allows the Chief to designate additional, specific eligibility requirements or activities that will be required for inclusion in a CSP contract for a given sign-up. Such requirements might be additional enhancements such as wildlife habitat or air quality activities.

Many who commented on the ANPR desired to make CSP supportive for those who actually work the land. Thus, there was strong support to allow contract modifications without penalties, to allow succession of interest clauses in the contract and for not requiring participants to control the land for 5 years.

NRCS recommends that contract modifications and succession of interest clauses be allowed in the contract without penalties. This section additionally proposes that participants must have control of the land for the contract period. NRCS believes that this approach would reduce the administrative burden on NRCS, reduce client paperwork, and increase the likelihood that the environmental benefits the participants achieve will endure. For the CSP contract, the participant will certify that they have control of the land for the contract period and will provide appropriate evidence, as determined by NRCS.

To be eligible for CSP, a producer must be applying a level of conservation treatment that meets or exceeds the minimum requirements. Producers who have historically met or exceeded the requirements, in some cases, may have endured a flood, fire, or other event that has either destroyed or damaged practices that would have made them eligible for CSP. NRCS is seeking comment on whether there should be any special dispensation or consideration given for this situation.

NRCS is proposing to use watersheds as a mechanism for focusing CSP participation. NRCS would nationally rank watersheds to focus on conservation and environmental quality concerns based on a score derived from a composite index of existing natural resource, environmental quality, and agricultural activity data. Watersheds ranked for potential CSP enrollment will be announced in the sign-up notice. Once the highest ranked watershed's applications were funded, the next watershed would be funded, etc. Funding would be distributed to each priority watershed to fund sub-categories until it was exhausted. NRCS is seeking comment on how each watershed would be funded.

NRCS is proposing that the majority of the agricultural operation is to be located within a selected priority watershed. Additionally, the following Tier specific requirements must be met:

(i) Tier I ''The applicant must have adequately addressed the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment on part of the agricultural operation.

(ii) Tier II—The applicant must have adequately addressed the nationally significant resource concerns of Soil Quality and Water Quality to the minimum level of treatment on the entire agricultural operation.

(iii) Tier III—The applicant must have adequately addressed all of the resource concerns listed in Section III of the NRCS Field Office Technical Guide with a resource management system that meets the minimum level of treatment on the entire agricultural operation. For Tier III contracts, NRCS proposes to require that participants treat, to the quality criteria level, all of their operation's land, including farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. This approach ensures that a Tier III participant's entire agriculture operation meets the quality criteria for all identified resource concerns and that its management is consistent with the NRCS technical guides. The approach also ensures that the program addresses more resources per Federal dollar expended, and that Tier III operations will be model conservation enterprises.

As a contract requirement, the participant will be required to do additional conservation practices, measures, or enhancements as outlined in this section and in the sign-up announcement. NRCS is seeking comment on these minimum eligibility and contract requirements. NRCS is also seeking comments on the utility of a self screening tool (both Web-based and hardcopy) to assist producers in determining if they should consider application to CSP. Should this self screening tool be a regulatory requirement and described in the proposed rule?

Section 1469.6 Enrollment Categories

Given the unusual nature of a capped entitlement program, NRCS looked for precedents in other Federal programs. One such program, a health care benefit, Enrollment ''Provision of Hospital and Outreach Care to Veterans, is implemented by the Department of Veterans Affairs (38 CFR part 17), which was used to pattern much of this discussion.

In managing the provisions of this part, the Secretary shall establish and operate a system of conservation enrollment categories to enable the Secretary to conduct the program in an orderly fashion and remain within the statutory budget caps. The enrollment categories are intended to identify and prioritize eligible producers within the selected watersheds for funding. Applicants would be eligible to be enrolled based on science-based, data supported, priority categories consistent with historic conservation performance established prior to the announcement of a sign-up. NRCS will develop criteria for construction of the enrollment categories, such as soil condition index, soil and water quality conservation practices and systems, and grazing land condition, and publish them for comment in the **Federal Register**. Categories will be based on the following principles:

(i) Categories will serve to sustain past environmental gains for nationally significant resource concerns consistent with the producer's historic conservation performance.

(ii) Category criteria will be sharply defined and science-based.

(iii) Categories will use natural resource, demographic, and other data sources to support the participation assumptions for each category.

(iv) The highest priority categories will require additional conservation treatment or enhancement activities to achieve the additional program benefits, and

(v) Categories will accommodate the adoption of new and emerging technologies.

Sub-categories may be established within the categories. All applications which meet the sign-up criteria will be placed in an enrollment category regardless of available funding. An application will be placed in the highest priority enrollment category or categories for which the application qualifies. Categories will be funded in priority order until the available funds are exhausted.

NRCS would fund as many categories as possible. If the last category cannot be fully funded, NRCS would fund producers within the category in order of the subcategories. NRCS is proposing to fund as many subcategories within the last category to be funded as possible. Additionally, NRCS is seeking comments on whether the remaining subcategories should be offered pro-rated payments, or not funded at all. Pro-rating payments raises a number of practical difficulties. NRCS is seeking comments on whether it should partially fund applications, or whether only those categories and subcategories that could be fully funded would be offered a CSP contract.

Within each category, limited resource and beginning farmers would be placed at the highest subcategory for funding. Applicants would be placed at the highest subcategory for which they may qualify.

Section 1469.7 Benchmark Condition Inventory and Conservation Security Plan

This section proposes that the applicant will establish an inventory of the benchmark conditions to identify the resource conditions of the agriculture operation following the NRCS planning process. The applicant uses benchmark condition inventories for each land use to take a ''snapshot'' of their operation's resource conditions, conservation practices, treatment, and management, particularly upon the application for CSP. The benchmark condition inventory helps NRCS determine the appropriate tier(s) of participation and payment levels and forms the foundation for the Conservation Security Plan. For CSP, the development of a Conservation Security Plan will complement what NRCS typically addresses in a conservation plan. The NRCS National Planning Procedures Handbook contains information and guidance on conducting resource inventories, establishing the benchmark condition, resource treatment criteria, and the development of conservation plans and area-wide plans. Examples of the benchmark inventory and tools to construct the inventory will be posted on the NRCS Web site and be available in local USDA Service Centers.

This section also identifies the content of the Conservation Security Plan. The plan document provided to the client must be a quality document containing meaningful information for the client. It should include the following items:

(1) Identification of the resource concerns currently being addressed;

(2) The schedule for completion of additional contract requirements and associated payments;

(3) A soil map with appropriate interpretations, such as land capability groupings, woodland suitability groups, pasture and hayland suitability groups, and other interpretive information regarding suitability for specific land uses;

(4) Appropriate worksheets developed with the client. The worksheets should include such things as resource inventories of the benchmark condition, forage inventories, erosion estimates, and cost estimates;

(5) Available job sheets and other prepared material applicable to the client's specific planned practices;

(6) Operation and maintenance agreements and procedures;

(7) Drawings, specifications and designs, as appropriate;

(8) A conservation plan map that indicates the boundaries, acreage and land use of the property to be included on the CSP contract. Examples of acceptable acreage calculations include:

- Program acres from FSA.
- Geographic information system calculations.
- Global positioning system.
- Land survey/plat map.
- Measurements taken from scaled maps or photographs.

(9) Basis of the Tier determination;

(10) Conservation practices required to be implemented, maintained, or improved; and

(11) Other activities or actions that have been or will be taken.

To the extent possible, existing case file information will be used as supporting documentation.

The participant and NRCS may modify the Conservation Security Plan during the life of the contract to reflect the participant's intent to address additional natural resource concerns or to increase the tier of participation. Also, as a participant undertakes new practices, it will allow them to achieve higher levels of stewardship.

Section 1469.8 Conservation Practices

CSP emphasizes conservation and the improvement of quality of the soil, water, air, energy, plant and animal life by addressing natural resource conditions, rather than using a prescriptive list of conservation practices and activities. NRCS will identify a suite of practices, treatments, and activities within practices that a participant can use to mitigate or prevent a resource problem or to produce environmental benefits, such as carbon sequestration. Although NRCS technical guides contain common suites of practices and treatments that address specific problems, NRCS will select specific practices available in a local area for CSP contracts based on site-specific conditions, tailoring them to the land characteristics and the producer's management objectives.

Some ANPR commenters noted a possible redundancy between CSP and other programs (such as EQIP and WHIP) that include cost-share payments for installing structural practices. Producers may use EQIP, WHIP, or other cost-share programs to install practices prior to applying for CSP. NRCS is proposing to utilize the new practice component of CSP to provide cost-share when practices are needed although at a lower cost share than other USDA programs, to minimize redundancy between CSP and other existing USDA conservation programs. Additionally, NRCS believes this optimizes the conservation and improvement of natural resources by utilizing the full portfolio of USDA conservation programs. NRCS seeks comment on whether this approach will encourage participants to install practices through other programs in order to become eligible for CSP.

NRCS is proposing to limit the number of practices offered for the existing practice and one-time new practice payments as discussed in Section 1469.23(c). Additionally NRCS proposes that consistent with EQIP, CSP will not make one-time new practice payments for a conservation practice applied prior to the CSP application, or payments for a one-time new practice installation that was implemented or initiated prior to approval of the contract, unless a waiver was granted by the State Conservationist prior to the installation of the practice. NRCS proposes to post the list of eligible practices before sign-up.

Section 1469.9 Technical Assistance

This section describes tasks needed to: (1) Conduct the sign-up and application process; (2) conduct conservation planning; conservation practice survey, layout, design, installation, and certification; (3) training, certification, and quality assurance of professional

conservationists; and (4) evaluation and assessment of the producer's operation and maintenance needs. NRCS is proposing that, consistent with NRCS's planning procedures policy, that Conservation Security Plans will be completed by certified conservation planners. This description is consistent with technical assistance requirements for other NRCS programs. NRCS is seeking comments on which tasks would be appropriate for approved or certified Technical Service Providers.

Subpart B Contracts and Payments

Section 1469.20 Application for Contracts and Their Selection

This section provides information on the sign-up announcement, application, and selection processes. The sign-up announcements will specify additional program eligibility and contract requirements, if applicable, and information about other requirements that would be required. NRCS intends to direct each sign-up towards producers in specific watersheds that have priority environmental concerns. Only producers in the areas identified through the sign-up announcement could apply for CSP funding. Additionally, NRCS would supply information about:

1. Priority order of enrollment categories that could be funded during the sign-up;
2. Expected number of contracts NRCS expects to be able to provide;
3. Cost schedules and a list of eligible existing and new conservation practices that can receive CSP payments as enhancement or to fulfill contract requirements;
4. Any additional nationally significant resource concerns that would need to be addressed for eligibility; and
5. Schedule for applications submission and other important deadlines.

Section 1469.21 Contract Requirements

This section provides specific contract terms, including contract duration, statutory requirements, consequences of failing to fulfill the terms of the contract, information requirements, schedule of payments, the contract expiration date, and the Agency's ability to incorporate other provisions determined necessary by the Agency to satisfy the objectives of the program.

The participant agrees in the contract to maintain at least the level of stewardship identified in the benchmark condition inventory for the entire contract period, as appropriate, and implement and maintain any new treatments required in the contract. Additionally, as a contract requirement, the participant will be required to complete additional conservation practices, measures, or enhancements as outlined in this section and in the sign-up announcement.

NRCS is proposing that CSP participants must address the following to the minimum level of treatment by the end of their CSP contract:

(1) Tier I contracts would require that in addition to the nationally significant resource concerns, additional requirements as required in the enrollment categories or sign-up announcement must be addressed over the contract acreage unless stipulated that they must be in place at the time of application;

(2) Tier II contracts would require a significant resource concern, as described in Section III of the NRCS FOTG, other than the nationally significant resource concerns, to be selected by the applicant and approved by NRCS, over the entire agricultural operation.

(3) Tier III contracts would require additional requirements as required in the enrollment categories or sign-up announcement as selected by the applicant and approved by NRCS, over the entire agricultural operation.

NRCS is seeking comment on the value of these additional requirements for Tier I and II contracts in order to maximize the environmental performance of the CSP program.

NRCS is proposing a mechanism for a participant to transition to a higher tier of participation and is seeking comment on this proposal. In the event that such a transition initiates with Tier I, only the land area in the agricultural operation that meets the requirements for enrollment in Tier I can be enrolled in the contract until the transition occurs. Upon the transition from Tier I to a higher tier of participation, the entire agricultural operation must be incorporated into the contract. All requirements applicable to the higher tier of participation would then apply. NRCS will calculate all base, existing practice, new practice one time payments, and enhancement payments using the applicable enrolled acreage at the time of the payment as planned in the contract schedule.

NRCS is proposing that as the tier transition occurs, that the contract be at the next tier for a period of no less than 18 months to ensure that the practices are functional and are being managed as an integral part of the agricultural operation.

The CSP contract may be adjusted by NRCS, and the participant, if the participant's management decisions change the appropriate set or schedule of conservation measures on the operation. If the participant cannot fulfill his CSP contract commitment, the contract calls for the participant to refund any CSP payments received with interest, and forfeit any future payments under CSP. NRCS is interested in comments on this and other concerns that the public might have on noncompliance with the CSP contract requirements.

NRCS will select certain practices that are needed to address significant resource concerns during the conservation security contract for one-time cost share payments. NRCS will also pay for certain practices needed to maintain the minimum level of treatment of significant resource concerns. NRCS may not pay for all practices needed to address the significant resource concerns on an agricultural operation.

Section 1469.22 Conservation Practice, Operation, and Maintenance

This section provides the participant responsibilities for updating and maintaining practices and contract activities and the duration of such responsibilities, as well as NRCS potential for periodic review.

Section 1469.23 Program Payments

This section provides information on how payments are calculated and potential program payment rates under the various program tiers.

CSP payments rise with increasing levels of conservation treatment within each tier and as tier levels increase. NRCS is proposing that CSP contract payments include one or more of the following components:

(1) An annual base component for the benchmark conservation treatment;

(2) An annual existing practice component for maintaining existing approved conservation practices;

(3) A one-time new practice component for additional approved practices; and

(4) An enhancement component for exceptional conservation effort and additional conservation practices or activities that provide increased resource benefits beyond the minimum level.

Each participant must fulfill all contract requirements in order to receive any payment. For example, a participant cannot decide, mid-contract, to cease enhancement activities and still continue to receive base and existing practice payments.

The Act requires NRCS to set appropriate rates for the base components of CSP payments using data from the 2001 program year in section 1469.23(a). NRCS proposes using regional and local data with adjustments to ensure consistency and regional equity. NRCS will first calculate the average 2001 rental rates using National Agriculture Statistics Service (NASS) regional data (or more local-level NASS data where available). Regional NASS data can help NRCS set rates that could apply within the State.

Where typical rental rates for a given land use vary widely within a State, NRCS will use local data to adjust the average county-level rates, then use a discounting procedure to set the final rate at a percentage of that average rate. Consistent local data are not readily available for all areas for all land uses, but NRCS will use the available data to determine reasonable local rates where feasible. The State Conservationists can also contribute additional local data, with advice from the State Technical Committee.

Once local average 2001 rental rates for each land use category are established, NRCS will then multiply those average rental rates by a consistent reduction factor to compute the final base rates. The results of the CSP proposed rule economic analysis indicated that, with all other payments held constant, the lower the reduction factor used on regional land rental rates, the less effect the base payment has on the overall producer payment. This results in more net environmental benefits accruing to the program. NRCS proposes the reduction factor to be 0.1, meaning that the final base rates will be 10 percent of the local average rental rates. NRCS believes this discounting approach will help:

- Minimize the effect of the base payment on land rental rates, land values and commodity prices
- Maximize participation in the program
- Focus funds toward increased environmental performance through additional practices and enhancements payments
- Maximize environmental benefits and reduce program costs
- Continue to provide the participant with fair and equitable compensation for the social benefits derived from the contract.

NRCS is seeking comment on whether the reduction factor should be fixed or variable over the life of the program, with the 0.1 factor being the upper limit.

The proposed rule sets base components of CSP payments to no more than 25 percent of the contract cap in Tier I and no more than 30 percent of the contract cap in Tier II and III.

Section 1469.23(b) and (c) describes how the Chief will determine and announce the practices eligible for new and existing payments based on the highest net benefits. NRCS proposes to limit the number of both new and existing practice payments to a short high priority list. State Conservationists will have an opportunity to tailor the list to meet the needs of local and State conditions. NRCS proposes to limit the new and existing practice payments to well below the statutory cap of 75 percent by setting a fixed rate for practices by county. By limiting practice payments, the opportunity exists to maximize the potential for enhancement payments. Although the Act allows higher levels of maintenance payments, NRCS believes that this proposal encourages all participants to adopt a higher level of conservation and to participate in locally led conservation efforts, record keeping and demonstration projects. Setting a fixed rate for existing practice payments will reduce the administrative burden for participants and local offices by avoiding the calculation of maintenance payments on individual practices, collecting receipts, and an overall reduction in paperwork associated with the program. In addition, having a fixed rate will avoid the uncertainty about developing consistent and uniform costs across State and county lines and the perplexity of calculating reasonable costs for routine maintenance activities can be avoided entirely.

NRCS proposes in Section 1469.23 that the program will pay for the land management practices that have a high potential to improve the conditions of the resources of concern, and that are determined to increase conservation benefits as determined by the State Conservationist, with advice from the State Technical Committee and local work group and that actions and activities that increase the management intensity above the quality criteria level be identified and paid as an enhancement activity.

Section 1469.23(d) proposes that State Conservationists, with advice from the State Technical Committee and local work groups, will determine the list of activities that qualify for enhancement payments and how the payments will be calculated. This approach customizes payments at the State level, and allows such leaders to focus and encourage activities they determine are important.

NRCS is proposing utilizing the enhancement component of a CSP payment to increase conservation performance regardless of tier of participation (including activities related to energy conservation) as a result of additional effort. The statute offers five types of enhancement activities and NRCS is seeking comments on the following concepts:

(1) The improvement of a significant resource concern to a condition that exceeds the requirements for the participant's tier of participation and contract requirements in Section 1469.5. For example, activities that increase the performance of management practices (management intensity) that contribute to additional improvement to the condition of the resources, provide for more efficient resource utilization and energy conservation;

(2) An improvement in a priority local resource condition, as determined by NRCS. For example, addressing water quality and wildlife concerns by the installation of riparian forest buffers to provide shade and cool surface water temperatures to restore critical habitat for salmon;

(3) Participation in an on-farm conservation research, demonstration, or pilot project. For example, conducting field trials with cover crops, mulches, land management practices to control cropland and stream bank erosion;

(4) Cooperates with other producers to implement watershed or regional resource conservation plans that involve at least 75% of the producers in the targeted area. For example, carrying out land management practices specifically called for in a watershed plan that control erosion and sedimentation, improve soil organic matter levels, reduce surface water contamination, and improve the condition of related resources; or

(5) Carries out assessment and evaluation activities relating to practices included in the Conservation Security Plan, such as water quality sampling at field edges, drilling monitoring wells, and gathering plant samples for analysis.

NRCS believes that, depending on local needs and concerns and availability of resources, different enhancement activities may be appropriate for different locations. For example, some watersheds may be covered by a conservation plan that involves most producers, whereas others may not. Additionally, implementing more conservation practices would yield environmental benefits only if those practices are appropriately tailored to address resource concerns on the agricultural operation. Finally, evaluation and assessment activities would likely provide more useful data if they are

conducted as part of a scientifically sound research plan. NRCS is seeking comments on which assessment and evaluation projects would most benefit from the involvement of CSP participants and would be most useful for program evaluation.

To ensure that enhancement activities would provide the most value to the CSP participant and the public, NRCS proposes that State Conservationists, with concurrence by the Chief, will determine which enhancement activities would be available locally, given local priority natural resource concerns, eligible assessment and evaluation research projects, existing watershed or regional resource conservation plans, and other considerations. NRCS will make a list of such activities available to the public.

CSP applicants would select from the list of available enhancement for their location. While choosing to undertake enhancement activities is solely within the producers' discretion, NRCS may provide priority funding to producers who agree to undertake those enhancement activities NRCS believes would provide substantial environmental or programmatic benefits. Accordingly, NRCS is proposing to place such producers at a higher enrollment category consistent with the sign-up announcement.

Section 1469.23(d) proposes that State Conservationists, with input from the State Technical Committee and Local Work Groups, would determine the payments level for each enhancement activity that would be offered locally, based on average county costs of undertaking such activities. Projected environmental and programmatic benefits would be considered when establishing payment levels. Some management intensity activities do not impose a clear cost on the producers. For example, applying fertilizer in the Spring rather than in the Fall may not impose an additional cost in terms of labor or materials. NRCS is seeking comments on how to determine the appropriate payment rates for those types of enhancement activities where the payment is intended to encourage producers to change their mode of operation, but not necessarily to offset additional or more expensive activities.

Section 1469.24 Contract Modifications and Transfers of Land

This section provides provisions for modifying contracts.

Section 1469.25 Contract Violations and Termination

This section provides provisions when participants fail to fulfill the terms of the contract. This regulation provides the NRCS State Conservationist the authority to determine the appropriate action based on the specific situations of the violation.

Subpart C—General Administration

Section 1469.30 Fair Treatment of Tenants and Sharecroppers

This section allows tenants and landowners to receive appropriate payment shares based on their contributions to the conservation management and land stewardship as determined by them. Before NRCS will approve a contract, tenants and owners must agree to their interest in the payments for both parties as documented in the program contract.

Sections 1469.31 through 1469.36 provides standard language used within other conservation program rules related to appeals, compliance with regulatory measures, access to agricultural operations, performance based upon the advice or action of representatives of CCC, offsets and assignments, misrepresentation, and scheme or device.

List of Subjects in 7 CFR Part 1469

Administrative practice and procedure, Agriculture, Environmental protection, Reporting and recordkeeping requirements, Soil conservation, Water pollution control.

Accordingly, Title 7 of the Code of Federal Regulations is proposed to be amended by adding a new part 1469 to read as follows:

PART 1469—CONSERVATION SECURITY PROGRAM

Subpart A—General Provisions

Sec.

1469.1 Applicability.
1469.2 Administration.
1469.3 Definitions.
1469.4 Significant resource concerns.
1469.5 Eligibility requirements and selection and funding of priority watersheds.
1469.6 Enrollment categories.
1469.7 Benchmark condition inventory and conservation security plan.
1469.8 Conservation practices.
1469.9 Technical assistance.

Subpart B—Contracts and Payments

1469.20 Application for contracts and their selection.
1469.21 Contract requirements.
1469.22 Conservation practice operation and maintenance.
1469.23 Program payments.
1469.24 Contract modifications and transfers of land.
1469.25 Contract violations and termination.

Subpart C—General Administration

1469.30 Fair treatment of tenants and sharecroppers.
1469.31 Appeals.
1469.32 Compliance with regulatory measures.
1469.33 Access to agricultural operation.
1469.34 Performance based on advice or action of representatives of NRCS.
1469.35 Offsets and assignments.
1469.36 Misrepresentation and scheme or device.

Authority: 16 U.S.C. 3830 *et seq.*

Subpart A—General Provisions

§ 1469.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Security Program (CSP) as administered by the Natural Resources Conservation Service (NRCS) for enrollment during calendar year 2003 and thereafter.

(b) CSP is applicable on private or Tribal lands in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Marianna Islands.

(c) Through the CSP the Commodity Credit Corporation (CCC), by and through the NRCS, provides financial assistance and technical assistance to owners and operators for the conservation, protection, and improvement of soil, water, and other related resources, and for any similar conservation purpose as determined by the Secretary.

§ 1469.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, Natural Resources Conservation Service (NRCS), who is a Vice President of the CCC.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program.

(c) The Chief determines fund availability to provide financial and technical assistance to participants according to the purpose and projected cost of contracts in a fiscal year. The Chief allocates the funds available to carry out CSP to the NRCS State Conservationist. Contract obligations will not exceed the funding available to the Agency.

(d) The State Conservationist may obtain advice from the State Technical Committee and local workgroups on the

development of State program technical policies, payment related matters, outreach efforts, and other program issues.

(e) NRCS may enter into agreements with Federal agencies, State and local agencies, conservation districts, Tribes, private entities and individuals to assist NRCS with educational efforts, outreach efforts, and program implementation assistance.

(f) For lands under the jurisdiction of a Tribal Nation, certain items identified in paragraph (d) of this section may be determined by the Tribal Nation and the Chief.

§ 1469.3 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Active personal management means is personally providing that:

(1) The general supervision and direction of activities and labor involved in the farming operation; and

(2) Services (whether performed on-site or off-site) reasonably related and necessary to the farming operation (examples are shown in 7 CFR 1400.3(b)).

Agricultural land means cropland, rangeland, pasture, private non-industrial forest land if it is an incidental part of the agricultural operation, and other land on which food, fiber, and other agricultural products are produced.

Agriculture operation means all agricultural land, and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, where the participant provides active personal management of the operation on the date of enrollment.

Applicant means an individual, entity, or joint operation that has an interest in a farming operation or produces food and fiber, as defined in 7 CFR 1400.3, who has requested in writing to participate in CSP.

At-risk species means any plant or animal species as determined by the State Technical Committee to need direct intervention to halt its population decline.

Base component of CSP payments means the CSP payment component as described in 1469.23(a).

Beginning farmer or rancher means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years, as defined in (7 U.S.C. 1991(a)). This requirement applies to all members of an entity; and

(2) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a contract with an individual, solely, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a contract with an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Benchmark condition inventory means the documentation of the resource condition or situation pursuant to § 1469.7(a) that NRCS uses to measure an applicant's existing level of conservation activities, to determine program eligibility, to design a conservation security contract, and to measure the change in resource conditions resulting from conservation treatment.

Certified Conservation Planner means a person who possesses the necessary skills, training, and experience to implement the NRCS nine-step planning process to meet client objectives in solving natural resource problems. The certified conservation planner has demonstrated skill in assisting clients to identify resource problems, to express the client's objectives, to propose feasible solutions to resource problems, and leads the client to choose and implement an effective alternative that treats resource concerns and meets the client's objectives.

Chief means the Chief of NRCS, USDA or designee.

Conservation district means any district or unit of State or local government formed under State, territorial, or tribal law for the express purpose of developing and carrying out a local soil and water conservation program. Such a district or unit of government may be referred to as a ''conservation district,'' ''soil conservation district,'' ''soil and water conservation district,'' ''resource conservation district,'' ''land conservation committee,'' or similar name.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation Reserve Program (CRP) means the Commodity Credit Corporation program administered by the Farm Service Agency pursuant to 16 U.S.C. 3831–3836.

Conservation security contract means a legal document that specifies the rights and obligations of any person who has been accepted for participation in CSP.

Conservation Security Plan (CSP) means the conservation planning document developed by the participant with assistance by NRCS or a technical service provider once the application is selected. The conservation security plan builds on the inventory of the benchmark condition documenting the conservation practices currently being applied; those practices needing to be maintained; and those practices or activities to be supported under the provisions of the conservation security contract.

Conservation system means a combination of conservation practices and resource management for the treatment of soil, water, air, plant, or animal resource concerns.

Conservation treatment means any and all conservation practices, measures, and works of improvement that have the purpose of alleviating resource concerns, solving or reducing the severity of natural resource use problems, or taking advantage of resource opportunities.

Considered to be planted means a long term rotation of alfalfa or multi-year grasses and legumes, summer fallow, typically cropped wet areas rotated to wildlife habitat, such as rice fields; or crops planted to provide an adequate seedbed for re-seeding.

Cropland means a land cover/use category that includes areas used for the production of adapted crops for harvest. Two subcategories of cropland are recognized: cultivated and noncultivated. Cultivated cropland comprises land in row crops or close-grown crops and also other cultivated cropland, for example, hayland or pastureland that is in a rotation with row or close-grown crops. Noncultivated cropland includes permanent hayland and horticultural cropland, including orchards and vineyards.

Designated conservationist means an NRCS employee whom the State conservationist has designated as responsible for administration of CSP in a specific area.

Enhancement component of a CSP payment means payments available to all tiers as described in § 1469.23(d).

Enrollment categories means a classification system built on science-based, data-supported criteria consistent with historic conservation performance used to sort out applications for payment. The enrollment category mechanism will create distinct classes for funding defined by resource concerns, levels of treatment, and willingness to achieve additional environmental performance.

Existing practice component of CSP payments means the component of a CSP payment as described in § 1469.23(b).

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and the interpretations of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Forest land means a land cover/use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 4 meters (13 feet) tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cut over forest or abandoned farmland) that is not currently developed for nonforest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater. The minimum area for classification as forest land is 1 acre, and the area must be at least 100 feet wide.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which:

(1) The United States holds title as trustee for an Indian or tribal beneficiary; or

(2) An Indian or tribal beneficiary holds title and the United States maintains a trust relationship.

Joint operation means a general partnership, joint venture, or other similar business arrangement as defined in 7 CFR 1400.3.

Land cover/use means a term that includes categories of land cover and categories of land use. Land cover is the vegetation or other kind of material that covers the land surface. Land use is the purpose of human activity on the land; it is usually, but not always, related to land cover. The National Resources Inventory uses the term land cover/use to identify categories that account for all the surface area of the United States.

Land management practice means conservation practices that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Limited resource producer means a person:

(1) With direct or indirect gross farm sales not more than $100,000 in each of the previous two years (to be increased starting in FY 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS)); and

(2) That has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Commerce Department Data).

Liquidated damages means a sum of money stipulated in the CSP contract which the participant agrees to pay NRCS if the participant fails to adequately complete the contract. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Local work group means representatives of local offices of FSA, the Cooperative State Research, Education, and Extension Service, the conservation district, and other Federal, State, and local government agencies, including Tribes, with expertise in natural resources who advise NRCS on decisions related to implementation of USDA conservation programs.

Maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Management intensity means the degree and scope of actions or activities taken by a producer which are beyond the minimum requirements of a management practice, and which qualify as additional effort necessary to receive an enhancement payment.

Measure means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the resources.

Minimum level of treatment means the specific conservation treatment NRCS requires that addresses a resource concern to a level that meets or exceeds the quality criteria according to NRCS technical guides.

Nationally significant resource concerns means the significant resource concerns identified by NRCS in this part and in the sign-up announcement.

New practice one-time payment means the payment as described in § 1469.23(c).

Operator means an individual, entity, or joint operation who is determined by the county committee as being in general control of the farming operations on the farm during the current year.

Participant means a producer who receives payments or benefits from the Conservation Security Program.

Pastureland means a land cover/use category of land managed primarily for the production of introduced forage plants for grazing animals. Pastureland cover may consist of a single species in a pure stand, a grass mixture, or a grass-legume mixture. Management usually consists of cultural treatments: fertilization, weed control, reseeding or renovation, and control of grazing.

Person has the same meaning as set out in 7 CFR 1400.3.

Practice life span means the time period in which the conservation practices are to be used and maintained for their intended purposes as defined by NRCS technical references.

Producer means an owner, operator, landlord, tenant, or sharecropper that shares in the risk of producing any crop or livestock; and is entitled to share in the crop or livestock available for marketing from a farm (or would have shared had the crop or livestock been produced).

Quality criteria means the minimally acceptable level of treatment required to achieve a resource management system for identified resource considerations for a particular land use as defined in the technical guide of NRCS.

Rangeland means a land cover/use category on which the climax or

potential plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. This term would include areas where introduced hardy and persistent grasses, such as crested wheatgrass, are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizer being applied. Grasslands, savannas, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

Resource concern means the condition of natural resources that may be sensitive to change by natural forces or human activity. NRCS identifies problems and opportunities relating to resource concerns by using predictive models, direct measurement, or observations in relation to client objectives. Resource concerns include the resource considerations listed in Section III of the FOTG, such as soil erosion, soil condition, soil deposition, water quality, water quantity, animal habitat, air quality, air condition, plant suitability, plant condition, plant management, and animal habitat and management.

Resource-conserving crop rotation means a crop rotation that includes at least one resource-conserving crop and that reduces erosion, maintains, or improves soil fertility and tilth, interrupts pest cycles, or conserves soil moisture and water.

Resource management system means a system of conservation practices and management relating to land or water use that is designed to prevent resource degradation and permit sustained use of land, water, and other natural resources, as defined in accordance with the technical guide of the Natural Resources Conservation Service.

Secretary means the Secretary of the U.S. Department of Agriculture.

Sharecropper means an individual who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provision of such labor.

Sign-up notice means the public notification document that NRCS provides to describe the particular requirements for a specific CSP sign-up.

Significant resource concerns means the list of resource concerns, identified by NRCS, associated with an agricultural operation that is subject to applicable requirements under CSP, such as eligibility.

Soil quality means resource concerns and/or opportunities related to depletion of soil organic matter content and the physical condition of the soil relative to ease of tillage, fitness as a seedbed, the impedance to seedling emergence root penetration and overall soil productivity.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities within a specified State, the Pacific Basin, or the Caribbean Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Structural practice means a conservation practice, including vegetative practices, that involves establishing, constructing, or installing a site-specific measure to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree planting, wildlife habitat, and capping of abandoned wells.

Technical assistance means the activities as defined in 7 CFR Part 1466.

Technical Service Provider means an individual, private-sector entity, or public agency certified or approved by NRCS to provide technical services through NRCS or directly to program participants, as defined in 7 CFR Part 652.

Tenant means one who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or one (other than a sharecropper) who rents land from another person in consideration of the payment of a share of the crops or proceeds therefrom.

Tier means one of the three levels of participation in CSP.

Water quality means resource concerns or opportunities, including concerns such as excessive nutrients, pesticides, sediment, contaminants, pathogens and turbidity in surface waters and excessive nutrients and pesticides in ground waters.

Watershed or regional resource conservation plan means a plan developed for a watershed or other geographical area defined by the stakeholders. The plan addresses identified resource problems, contains alternative solutions that meet the stakeholder objectives for each resource, and addresses applicable laws and regulations as defined in the NRCS National Planning Procedures Handbook.

Wetlands Reserve Program (WRP) means the Commodity Credit Corporation program administered by the Natural Resources Conservation Service pursuant to 16 U.S.C. 3837, *et seq*.

§ 1469.4 Significant resource concerns.

(a) Soil quality and water quality, as described in Section III of the NRCS Field Office Technical Guide, are nationally significant resource concerns.

(b) The minimum level of treatment for addressing resource concerns is that meeting or exceeding the quality criteria according to the NRCS technical guides.

(c) For each sign-up, the Chief may determine additional nationally significant resource concerns. Such significant resource concerns will reflect pressing conservation needs and emphasize off-site environmental benefits.

§ 1469.5 Eligibility requirements and selection and funding of priority watersheds.

(a) To be eligible to participate in CSP, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions found in 7 CFR Part 12;

(2) Have an interest in the farming operation as defined in 7 CFR 1400.3;

(3) Have control of the land for the life of the proposed contract period;

(i) The Chief may make an exception for land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control.

(ii) If the applicant is a tenant, the applicant must provide NRCS with the written evidence or assurance of control from the landowner.

(iii) If the applicant cannot show control of a parcel for the life of the contract, that part of the agricultural operation that does not qualify for any payment component. However, the land is considered part of the contract and is required to be maintained at the same conservation standard of the rest of the operation.

(4) Tier eligibility requirements:

(i) An applicant is eligible to participate in CSP Tier I only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment on part of the agricultural operation. Only the acreage meeting the requirements in § 1469.7(a) is eligible for payment in CSP.

(ii) An applicant is eligible to participate in CSP Tier II only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment on the entire agricultural operation. Under Tier II, the entire agricultural operation must be enrolled in CSP.

(iii) An applicant is eligible to participate in CSP Tier III only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the resource concerns listed in Section III of the NRCS Field Office Technical Guide with a resource management system that meets the minimum level of treatment on the entire agricultural operation. Under Tier III, the entire agricultural operation is enrolled in CSP including other land as defined in § 1469.5(b)(5).

(5) Share or be entitled to share in the crop or livestock available for marketing from the agriculture operation;

(6) Complete a benchmark condition inventory for the entire agricultural operation or the portion being enrolled in accordance with § 1469.7(a);

(7) Supply information, as required by NRCS, to determine eligibility for the program; including but not limited to information related to eligibility criteria in the sign-up announcement; and information to verify the applicant's status as a beginning farmer or rancher;

(8) Meet additional eligibility criteria and contract requirements that may be included in a CSP sign-up announcement pursuant to § 1469.20(b).

(b) To be eligible for enrollment in CSP, land must be:

(1) Private agricultural land;

(2) Private non-industrial forested land that is an incidental part of the agriculture operation;

(3) Agricultural land that is Tribal, allotted, or Indian trust land; and

(4) Other incidental parcels, as determined by NRCS, which may include, but are not limited to, land within the bounds of working agricultural land or small adjacent areas (such as center pivot corners, field borders, turn rows, intermingled small wet areas or riparian areas); or

(5) Other land on which NRCS determines that conservation treatment will contribute to an improvement in an identified natural resource concern, including areas outside the boundary of the agricultural operation or enrolled parcel such as farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. Other land must be treated in Tier III contracts.

(c) The following land is not eligible for enrollment in CSP:

(1) Land enrolled in the Conservation Reserve Program;

(2) Land enrolled in the Wetlands Reserve Program;

(3) Land enrolled in the Grassland Reserve Program pursuant to 16 U.S.C. 3838n;

(4) Public land.

(d) The following land is not eligible for any payment component in CSP: Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production, as determined by NRCS, for at least 4 of the 6 years preceding May 13, 2002.

(e) Selection and funding of priority watersheds.

(1) NRCS will nationally prioritize watersheds based on a score derived from a composite index of existing natural resource, environmental quality, and agricultural activity data. The watershed prioritization and identification process will consider several factors, including but not limited to:

(i) Vulnerability to surface and ground water quality;

(ii) Potential for excessive soil quality degradation;

(iii) Condition of grazing land.

(2) Priority watersheds selected, in which producers would be potentially eligible for enrollment, will be announced in the sign-up notice.

(3) NRCS will request public comment on the process used to select the watersheds before the sign-up announcement.

§ 1469.6 Enrollment categories.

(a) NRCS will publish and consider public comment on the specific enrollment categories that will be used for identifying, classifying and prioritizing contracts to be funded pursuant to § 1469.20(b). Enrollment categories would be constructed using science-based, data-supported criteria consistent with historic conservation performance. The enrollment categories will be defined by criteria related to resource concerns and levels of treatment already documented in the benchmark inventory, and willingness to achieve additional environmental performance.

(b) All applications which meet the sign-up criteria within the priority watersheds will be placed in an enrollment category regardless of available funding.

(c) NRCS will develop subcategories within each enrollment category. The development of subcategories may consider several factors, including:

(1) Willingness of the applicant to participate in local conservation enhancement activities;

(2) Targeting program participation for Limited Resource Producers;

(3) Targeting program participation to water quality priority areas for nutrient or pest management;

(4) Targeting program for at-risk species habitat creation and protection; and

(5) Other priorities as determined by the Secretary.

(d) At the beginning of each sign-up, the Chief will announce the order in which categories are eligible to be funded. The preamble to the sign-up notice must specify the projected number of applicants for enrollment in each category, projected expenditures for enrollees in the priority category, available funding, and other revenue projected to be available for the sign-up, and results—projected total expenditures for enrollees by priority category. The determination should include consideration of relevant internal and external factors, *e.g.,* changes in the cost of practice implementation, changes in technology, changes in the cost of non-USDA technical assistance, and waiting time to receive technical assistance.

(e) An eligible application will be placed in the highest priority enrollment category and sub-category for which the application qualifies.

(f) Enrollment categories and subcategories will be funded in priority order until the available funds specified in the CSP sign-up announcement are exhausted.

§ 1469.7 Benchmark condition inventory and conservation security plan.

(a) Benchmark condition inventory.

(1) CSP applicants will develop and submit a benchmark condition inventory of the entire agricultural operation or the portion of the agricultural operation intended to be enrolled in accordance with § 1469.5(a)(7).

(2) The benchmark condition inventory must include:

(i) A description of the applicant's production system on the agricultural operations;

(ii) The land uses, acreage, and other information; and

(iii) The existing conservation practices and resource concerns, problems, and opportunities on the operation.

(3) NRCS will use the benchmark condition inventory to:

(i) Determine CSP eligibility;

(ii) Place an eligible contract into an appropriate enrollment category;

(iii) Verify the tier(s) of CSP participation; and

(iv) Determine payments for existing conservation practices under the CSP contract.

(b) Conservation security plan.

(1) Once an application has been selected as eligible for CSP, NRCS may assist producers that agree to enter into conservation security contracts in developing a conservation security plan that provides specific information for improving and maintaining the natural resources of the agricultural operation. To enter into a CSP contract, an applicant must submit an NRCS-approved conservation security plan.

(2) The conservation security plan must include:

(i) To the extent practicable, a quantitative and qualitative description of the conservation and environmental benefits that the conservation security contract will achieve;

(ii) A plan map showing the acreage to be enrolled in CSP;

(iii) A benchmark conditions inventory as described in § 1469.7(a);

(iv) The significant resource concerns and other resource concerns to be addressed in the contract;

(v) A description and implementation schedule of:

(A) Individual conservation practices and measures to be maintained during the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns and with the requirements of the sign-up;

(B) Individual conservation practices and measures to be installed during the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns;

(C) Eligible enhancement activities as selected by the participant and approved by NRCS; and

(D) A schedule for transitioning to higher tier(s) of participation, if applicable;

(vi) A description of which conservation activities that qualify for enhancements within that tier that are required for a participant to transition to higher tier of participation;

(vii) Information that will enable evaluation of the effectiveness of the plan in achieving its environmental objectives; and

(viii) Other information determined appropriate by NRCS.

(3) The conservation security plan may be developed with assistance from NRCS or NRCS-certified Technical Service Providers.

(4) All conservation practices in the conservation security plan must be carried out in accordance with the applicable NRCS Field Office Technical Guide.

§ 1469.8 Conservation practices.

(a) Conservation practice selection.

(1) The Chief will provide a list of structural, vegetative, and land management practices and intensive management activities eligible for CSP payment. When determining the list of practices and their associated rates, the Chief will consider:

(i) The conservation practice's cost effectiveness;

(ii) The degree of treatment of significant resource concerns;

(iii) The number of resource concerns the practice will address;

(iv) Locally available technology;

(v) New and emerging conservation technology; and

(vi) Ability to address the resource concern based on site specific conditions.

(2) State Conservationists may develop a targeted subset of eligible practices based on the nationally eligible list with concurrence of the Chief for their proposed listing of:

(i) Eligible conservation practices for both new and existing practice payments; and

(ii) Conservation practices, measures, and management activities proposed for enhancement payments.

(3) To address unique resource conditions in a State or region, the Chief may make additional conservation practices, measures, and enhancement activities eligible that are not included in the national list of eligible CSP practices.

(4) NRCS will make the list of eligible practices and their individual cost-share rates available to the public.

(b) NRCS will consider the qualified practices and activities in its computation of CSP payments except for provided for in paragraph (d) of this section.

(c) NRCS will not make new practice payments for a conservation practice the producer has applied prior to application for the program.

(d) New practice installation payments will not be made to a participant who has implemented or initiated the implementation of a conservation practice prior to approval of the contract unless a waiver was granted by the State Conservationist or the Designated Conservationist prior to the installation of the practice.

(e) Where new technologies or conservation practices that show high potential for optimizing environmental benefits are available, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices.

(f) NRCS will set the minimum level of treatment within land management practices at the national level. The State Conservationist can supplement specific criteria to meet localized conditions within the State or areas.

§ 1469.9 Technical assistance.

(a) NRCS may use the services of NRCS-approved or certified Technical Service Providers in performing its responsibilities for technical assistance.

(b) Technical assistance may include, but is not limited to: assisting applicants during sign-up, processing and assessing applications, assisting the participant in developing the conservation security plan; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and training, certification, and quality assurance for professional conservationists.

(c) NRCS retains approval authority over the certification of technical assistance done by non-NRCS personnel.

(d) NRCS retains approval authority of the CSP contracts and contract payments.

(e) Conservation security plans will be developed by NRCS certified conservation planners.

Subpart B—Contracts and Payments

§ 1469.20 Application for contracts and their selection.

(a) Participation in CSP is voluntary.

(b) NRCS will publish a CSP sign-up notice with sufficient time for producer consideration prior to the close of the sign-up period. In the public sign-up notice, the Chief will announce and explain the rationale for decisions for the following information:

(1) Additional program eligibility criteria not listed in § 1469.5;

(2) Additional nationally significant resource concerns not listed in § 1469.4(a) that will apply;

(3) Additional requirements that participants must include in their CSP applications and contracts not listed in § 1469.21;

(4) Information on the priority order of enrollment categories for funding contracts;

(5) Specific information on the share of funding that NRCS estimates will go toward base, maintenance, and enhancement payments;

(6) An estimate of the total funds NRCS expects to obligate under new contracts during a given sign-up, and an estimate for the number of enrollment categories and contracts NRCS expects to be able to fund; and

(7) The schedule for the sign-up process, including the deadline(s) for applying.

(c) NRCS will accept applications according to the timeframes specified in the sign-up announcement. Applications must include:

(1) A complete benchmark condition inventory for the entire operation or for the portion being enrolled;

(2) Any other requirements specified in the sign-up announcement;

(3) For Tier I, clear indication of which acres the applicant wishes to enroll in the CSP; and

(4) A certification that the applicant will agree to meet the relevant contract requirements outlined in the sign-up announcement.

(5) Confirmation of basic eligibility criteria; and

(6) Enhancements that the applicant may be willing to undertake.

(d) Producers who are members of a joint operation must file a single application for the joint operation.

(e) Selection of contracts. NRCS will determine whether the application meets the eligibility criteria and will place applications into the appropriate enrollment category based on the criteria specified in the sign-up announcement until the available funding is exhausted. NRCS will determine the number of categories that can be funded in accordance with the sign-up announcement and will inform the applicant of its determinations. NRCS will determine in which tier(s) the participant is eligible to participate. NRCS would notify applicants of these determinations.

(f) NRCS will schedule a follow-up interview with the applicant to construct the conservation security plan and to develop a conservation security contract for the selected applications. NRCS makes payments as described in the contract in return for their application and/or maintenance of a specified level of conservation treatment on all or part of the agricultural operation.

§ 1469.21 Contract requirements.

(a) To receive payments, each participant must enter into a conservation security contract and comply with its provisions. Among other things, the participant agrees to maintain at least the level of stewardship identified in the benchmark or the portion being enrolled condition inventory for the entire contract period, as appropriate, and implement and maintain any new treatments required in the contract.

(b) Program participants will only receive payments from one conservation security contract per agricultural operation.

(c) CSP participants must address the following resource concerns to the minimum level of treatment by the end of their CSP contract:

(1) Tier I contract requirement: additional requirements as required in the enrollment categories, over the part of the agricultural operation to be enrolled in CSP.

(2) Tier II contract requirement: additional requirements as required in the enrollment categories and a significant resource concern as described in Section III of the NRCS FOTG other than the nationally significant resource concerns, to be selected by the applicant and approved by NRCS, over the entire agricultural operation.

(3) Tier III contract requirement: additional requirements as required in the enrollment categories will be selected by the applicant and approved by NRCS, over the entire agricultural operation.

(c) Transition to a higher tier of participation.

(1) Upon agreement by NRCS and the participant, a conservation security contract may include provisions that increase the tier of participation during the contract period. Such a transition does not require a contract modification providing that the transition is laid out in the schedule of contract activities. In the event that such a transition initiates with Tier I, only the land area in the agricultural operation that meets the requirements for enrollment in Tier I can be enrolled in the contract until the transition occurs. Upon transition from Tier I to a higher tier of participation, the entire agricultural operation must be incorporated into the contract. All requirements applicable to the higher tier of participation would then apply. NRCS will calculate all base, existing practice, new practice one-time payments, and enhancement payments using the applicable enrolled acreage at the time of the payment.

(2) A contract in which a participant transitions to higher tier(s) of participation must include:

(i) A schedule for the activities associated with the transition(s);

(ii) A date certain by which time the transition(s) must occur; and

(iii) A specification that the CSP payment will be based on the current Tier of participation which may change over the life of the contract.

(3) A contract in which a participant transitions from Tier I to a higher tier must include:

(i) A participation period of no less than 18 months at Tier I;

(ii) A participation period of no less than 18 months at Tier II;

(iii) The applicable geographic boundaries for the Tier I contract period and the higher tier contract period;

(4) A contract in which a participant transitions from Tier II to Tier III must include a participation period of no less than 18 months at Tier II.

(d) A conservation security contract must:

(1) Incorporate by reference the conservation security plan;

(2) Be for 5 years for Tier I, and 5 to 10 years for Tier II or Tier III;

(3) Incorporate all provisions as required by law or statute, including participant requirements to:

(i) Implement and maintain the practices as identified and scheduled in the conservation security plan, including those needed to be eligible for the specified tier of participation and comply with any additional sign-up requirements;

(ii) Not conduct any practices on the farm or ranch that tend to defeat the purposes of the contract;

(iii) Refund any CSP payments received with interest, and forfeit any future payments under CSP, on the violation of a term or condition of the contract;

(iv) Refund all CSP payments received on the transfer of the right and interest of the owner or operator in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract; and

(v) Supply records and information as required by CCC to determine compliance with the contract and requirements of CSP.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices;

(5) Specify the schedule of payments under the life of the contract, including how those payments:

(i) Relate to the schedule for implementing additional conservation measures as described in the security plan;

(ii) Relate to the participant's actual implementation of additional conservation measures as described in the security plan; and

(iii) May be adjusted by NRCS if the participant's management decisions change the appropriate set or schedule of conservation measures on the operation.

(6) Incorporate any other provisions determined necessary or appropriate by NRCS, or included as a requirement for the sign-up.

(e) The participant must apply and maintain the practice(s) within the timelines specified in the contract.

(f) Contracts expire on September 30 in the last year of the contract. Contracts are not renewable unless determined by the Chief as described in § 1469.24. A participant may apply for a new conservation security contract at the next sign-up.

(g) Participants must:

(1) Implement the conservation security contract approved by NRCS;

(2) Make available to NRCS, appropriate records showing the timely implementation of the contract;

(3) Comply with the regulations of this part; and

(4) Not engage in any activity that interferes with the purposes of the program, as determined by NRCS.

(h) NRCS will determine the payments under the contract based in § 1469.23:

(i) NRCS will not pay participants for: practices within their conservation security plan that are required to meet conservation compliance requirements found in 7 CFR Part 12; practices that are included in maintenance agreements (with financial reimbursements for maintenance) that have existed prior to the participant's conservation security contract approval; or the maintenance of equipment.

(j) For contracts encompassing the participant's entire agricultural operation, the geographic boundaries of the acreage enrolled in the contract must include all fields and facilities under the participant's direct control, as determined by NRCS.

§ 1469.22 Conservation practice operation and maintenance.

The contract will incorporate the operation and maintenance of the conservation practice(s) applied under the contract. The participant must operate and maintain the conservation practice(s) for its intended purpose for the life span of the conservation practice(s), as identified in the contract or conservation security plan, as determined by NRCS. Conservation practices that are installed before the execution of a contract, but are needed in the contract to obtain the intended environmental benefits, must be operated and maintained as specified in the contract. NRCS may periodically inspect the conservation practices during the practice lifespan as specified in the contract to ensure that operation and maintenance are being carried out, and that the practice is fulfilling its intended objectives. When NRCS finds that a participant is not operating and maintaining practices installed through CSP in an appropriate manner, NRCS will request a refund of any associated payments that NRCS made for that practice under the contract. If an existing practice does not meet NRCS standards, the practice must be modified or updated to meet the standard according to the Field Office Technical Guide, or additional treatment must be completed to address the resource concern before the contract can be executed.

§ 1469.23 Program payments.

(a) Base component of CSP payments.

(1) The conservation security plan, as applicable, divides the land area to be enrolled in CSP into land use categories, such as irrigated and non-irrigated cropland, irrigated and non-irrigated pasture, and rangeland, among other categories.

(2) NRCS will determine an appropriate base rate for each land use category using the following methodology:

(i) NRCS will initially calculate the average 2001 rates using National Agriculture Statistics Service (NASS) regional rental data (or more local-level NASS data where available) with adjustments to ensure regional consistency.

(ii) Where typical rental rates for a given land use vary widely within a State, NRCS will use local data to adjust the average county-level rates then take a nationally set percentage of that average rate for a final rate.

(iii) Where consistent local data are not readily available for all areas for all land uses, NRCS will use the available data to determine reasonable local rates where feasible. The State Conservationists can also contribute additional local data, with advice from the State Technical Committee.

(iv) The regionally adjusted rates will not change over the life of the program.

(v) The final base rate will be the adjusted regional rates described in paragraphs (a)(2)(i) through (iii) of this section multiplied by a factor of 0.1.

(3) NRCS will compute the Base Component of a participant's CSP payment as the product of: the number of acres in each land use category (not including ''other''); the corresponding base rate for the applicable acreage; and a tier-specific percentage. The tier-specific percentage is 5 percent for Tier I payments, 10 percent for Tier II payments, and 15 percent for Tier III payments.

(4) Other land as defined in § 1469.5(b)(5) is not included in the base payment.

(5) NRCS will announce the base rates at the time of the first CSP sign-up.

(b) Existing practice component of CSP payments.

(1) The Chief will determine and announce which practices will be eligible for existing practice payments in accordance with § 1469.8(a).

(2) With exceptions including, but not limited to, paragraphs (b)(3) and (4) of this section, NRCS may pay the participant a percentage of the average 2001 county cost of maintaining a land management, and structural practice that is documented in the benchmark condition inventory as existing upon enrollment in CSP. In no case will the payment exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average 2001 county costs of installing the practice in the 2001 crop year. NRCS will post the cost-share rates for each practice in CSP at the time of the sign-up announcements.

(3) NRCS will not pay for maintenance of structural practices when such maintenance is required by an agreement between the participant and a Federal or State authority.

(4) NRCS will not pay an existing practice component of CSP payments for any practice that is included in a participant's Highly Erodible Land and Wetland Conservation Compliance plan, as required by the Food Security Act of 1985.

(c) New practice one-time payments.

(1) The Chief will determine and announce which practices will be eligible for new practice payments in accordance with § 1469.8(a).

(2) If a participant's CSP contract requires the participant to implement a new structural, vegetative, or management practice, NRCS may pay the participant a percentage of the cost of installing the new practice. In no case will the payment exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average county costs of installing the practice in the 2001 crop year. NRCS will provide the list of approved practices and the percentage cost-share rate for each practice at the time of each CSP sign-up announcement.

(3) NRCS may pay new practice payments to participants to install structural conservation practices, except:

(i) Construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations; or

(ii) The purchase or maintenance of equipment or a non-land based structure that is not integral to a land based practice, as determined by the Secretary.

(4) Participants may contribute to their share of the cost of installing a new practice through in-kind sources, such as personal labor, use of personal equipment, or donated materials. Contributions for a participant's share of the practice may also be provided from non-Federal sources, as determined by the Chief.

(5) Cost-share payments may be provided by other USDA programs; except that payments may not be provided through CSP and another program for the same practice on the same land area.

(6) If additional practices are installed or implemented to advance a participant from one tier of participation to a higher tier, the practice must be certified as established by NRCS and be maintained for 18 months prior to advancing to a higher tier as described in § 1469.24(b).

(7) In no instance will the total financial contributions for installing a practice from all public and private entity sources exceed 100 percent of the actual cost of installing the practice.

(8) NRCS will not pay a new practice one-time payment for any practice that is included in a participant's Highly Erodible Land and Wetland Conservation Compliance plan, as required by the Food Security Act of 1985.

(d) Enhancement component of CSP payments.

(1) State Conservationists, with advice from the State Technical Committees, will develop and submit for concurrence to the Chief a proposed list of conservation activities that are eligible for enhancement payments.

(2) NRCS may pay an enhancement component of a CSP payment if a conservation security plan demonstrates to the satisfaction of NRCS that the plan's activities will increase conservation performance including activities related to energy conservation as a result of additional effort by the participant and result in:

(i) The improvement of a resource concern by implementing or maintaining multiple conservation practices or measures that exceed the minimum eligibility requirements for the participant's Tier of participation as outlined in the sign-up announcement and as described in § 1469.4 and the contract requirements in § 1469.21; or

(ii) An improvement in a local resource concern based on local priorities and in addition to the national significant resource concerns, as determined by NRCS.

(3) NRCS may also pay an enhancement component of a CSP payment if a participant:

(i) Participates in an on-farm conservation research, demonstration, or pilot project as outlined in the sign-up announcement; or

(ii) Cooperates with other producers to implement watershed or regional resource conservation plans that involve at least 75 percent of the producers in the targeted area; or

(iii) Carries out assessment and evaluation activities relating to practices included in the conservation security plan as outlined in the sign-up announcement.

(4) NRCS will not pay the enhancement component of a CSP payment for any practice that is included in a participant's Highly Erodible Land and Wetland Conservation Compliance plan as required by the Food Security Act of 1985.

(5) Eligible enhancement payments.

(i) State Conservationists, with advice from the State Technical Committees, will develop proposed enhancement payment amounts for each activity.

(ii) Enhancement payments will be determined based on a given activity's cost effectiveness and expected net environmental benefits, and the payment amount will be an amount and at a rate necessary to encourage a participant to perform a management practice or measure, resource assessment and evaluation project, or field-test a research, demonstration, or pilot project, that would not otherwise be initiated without government assistance. This amount will not exceed the participant's estimated cost of undertaking such activity.

(iii) NRCS will provide the list of approved enhancement activities and payment amounts for each activity prior to the CSP sign-up announcements.

(e) Contracts will be limited as follows:

(1) $20,000 per year for a Tier I conservation security contract,

(2) $35,000 per year for a Tier II conservation security contract, or

(3) $45,000 per year for a Tier III conservation security contract.

(4) Base components of CSP payments cannot exceed $5,000 per year for Tier I, $10,500 per year for Tier II, or $13,500 per year for Tier III.

(f) The practice and enhancement components of CSP contract payment may increase once the participant applies and maintains additional conservation measures as described in the conservation security plan.

(g) The Chief of NRCS may limit the base, practice, and enhancement components of CSP payments in order to focus funding toward targeted activities and conservation benefits the Chief identifies in the sign-up notice and any subsequent addenda.

(h) Land not under the control of the applicant for the life of the contract is subject to limits described in § 1469.5(a)(3)(iii).

§ 1469.24 Contract modifications and transfers of land.

(a) Contracts may be modified upon agreement between the Chief and the participant.

(b) Participants may modify their contract to change their tier of participation under a CSP contract once the measures determined necessary by NRCS to meet the next tier level have been established and maintained for a period of 18 months.

(c) Contract transfers are permitted when there is agreement among all parties to the contract. The transferee must be determined by NRCS to be eligible and must assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(d) The Chief may require a participant to refund all or a portion of any assistance earned under CSP if the participant sells or loses control of the land under a CSP contract, and the new owner or controller is not eligible to participate in CSP, or refuses to assume responsibility under the contract within 60 days after the date of the transfer or change in the interest of the land.

(e) The State Conservationist may require contract modifications if the State Conservationist determines that a change in the type, size, management, or other aspect of the agriculture operation would interfere with achieving the purposes of the CSP contract.

§ 1469.25 Contract violations and termination.

(a) If the NRCS determines that a participant is in violation of the terms of a contract, or documents incorporated by reference into the contract, NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, the State Conservationist may terminate the CSP contract.

(b) Notwithstanding the provisions of paragraph (a) of this section, a contract termination is effective immediately upon a determination by the State Conservationist that the participant has:

submitted false information; filed a false claim; engaged in any act for which a finding of ineligibility for payments is permitted under this part; or taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

(c) If NRCS terminates a contract, the participant must forfeit all rights for future payments under the contract and must refund all or part of the payments received, plus interest, and liquidated damages as determined in accordance with 7 CFR Part 1403. The State Conservationist can require only partial refund of the payments received if a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(d) If NRCS terminates a contract due to breach of contract, or the participant voluntarily terminates the contract before any contractual payments have been made, the participant must forfeit all rights for further payments under the contract, and must pay such liquidated damages as are prescribed in the contract. The State Conservationist has the option to waive the liquidated damages depending upon the circumstances of the case.

(e) When making all contract termination decisions, the State Conservationist may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract.

(f) The participant may voluntarily terminate a contract if the State Conservationist determines that termination is justified based on information involving natural disasters, documented hardship situations and situations where termination is in the public interest.

(g) In carrying out the role in this section, the State Conservationist may consult with the local conservation district.

Subpart C—General Administration

§ 1469.30 Fair treatment of tenants and sharecroppers.

Payments received under this part must be divided in the manner specified in the applicable contract or agreement, and NRCS will ensure that producers who would have an interest in acreage being offered receive treatment which NRCS deems to be equitable, as determined by the Chief. NRCS may refuse to enter into a contract when there is a disagreement among applicants seeking enrollment as to a producer's eligibility to participate in the contract as a tenant.

§ 1469.31 Appeals.

(a) An applicant or a participant may obtain administrative review of an adverse decision under CSP in accordance with 7 CFR Parts 11 and 614, Subparts A and C, except as provided in paragraph (b) of this section.

(b) Participants cannot appeal the following decisions:

(1) Payment rates, payment limits, and cost-share percentages;

(2) Eligible conservation practices; and

(3) Other matters of general applicability.

(c) Before a participant can seek judicial review of any action taken under this part, the participant must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these procedures.

§ 1469.32 Compliance with regulatory measures.

Participants who carry out conservation practices are responsible for obtaining the authorities, permits, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants must comply with all laws and are responsible for all effects or actions resulting from the participant's performance under the contract.

§ 1469.33 Access to agricultural operation.

Any authorized NRCS representative has the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access includes the right to provide technical assistance, inspect any work undertaken under the contract, and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS representative will make a reasonable effort to contact the producer prior to the exercise of this provision.

§ 1469.34 Performance based on advice or action of representatives of NRCS.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the State Conservationist may accept the advice or action as meeting the requirements of CSP. In addition, the State Conservationist may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good faith reliance on the part of the participant.

§ 1469.35 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, NRCS will make any payment or portion thereof to any person without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR Part 1403 are applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at 7 CFR Part 1404.

§ 1469.36 Misrepresentation and scheme or device.

(a) If the Department determines that a producer erroneously represented any fact affecting a CSP determination made in accordance with this part, such producer is not entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with § 1469.25.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of CSP;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a CSP determination, must refund to NRCS all payments, plus interest determined in accordance with § 1469.25 received by such producer with respect to all contracts. In addition, NRCS will terminate the participant's interest in all CSP contracts.

(c) If the producer acquires land subsequent to enrollment in CSP, that land is not considered part of the agricultural operation; however, if the land was previously owned or controlled by them before the date of enrollment and after May 13, 2002, then NRCS will conduct an investigation into the activity to see if there was a scheme or device.

Signed in Washington, DC, on December 18, 2003.

Bruce I. Knight,

Vice President, Commodity Credit Corporation Chief, Natural Resources Conservation Service.

[FR Doc.03–31916 Filed 12–31–03; 8:45 am]

BILLING CODE 3410–16–P

Federal Register

Friday,
January 2, 2004

Part IV

The President

Proclamation 7748—To Take Certain Actions Under the African Growth and Opportunity Act, and for Other Purposes

Executive Order 13322—Adjustments of Certain Rates of Pay

Executive Order 13323—Assignment of Functions Relating to Arrivals in and Departures From the United States

Federal Register
Vol. 69, No. 1
Friday, January 2, 2004

Presidential Documents

Title 3—

The President

Proclamation 7748 of December 30, 2003

To Take Certain Actions Under the African Growth and Opportunity Act, and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 506A(a)(1) of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2466a(a)(1)), as added by section 111(a) of the African Growth and Opportunity Act (title I of Public Law 106–200) (AGOA), authorizes the President to designate a country listed in section 107 of the AGOA (19 U.S.C. 3706) as a ''beneficiary sub-Saharan African country'' if the President determines that the country meets the eligibility requirements set forth in section 104 of the AGOA (19 U.S.C. 3703), as well as the eligibility criteria set forth in section 502 of the 1974 Act (19 U.S.C. 2462).

2. Section 104 of the AGOA authorizes the President to designate a country listed in section 107 of the AGOA as an ''eligible sub-Saharan African country'' if the President determines that the country meets certain eligibility requirements.

3. Section 112(b)(3)(B) of the AGOA (19 U.S.C. 3721(b)(3)(B)) provides special rules for certain apparel articles imported from ''lesser developed beneficiary sub-Saharan African countries.''

4. In Proclamation 7350 of October 2, 2000, President Clinton designated the State of Eritrea (Eritrea) and the Central African Republic as beneficiary sub-Saharan African countries pursuant to section 506A(a) of the 1974 Act and provided that they would be considered lesser developed beneficiary sub-Saharan African countries for purposes of section 112(b)(3)(B) of the AGOA.

5. Section 506A(a)(3) of the 1974 Act (19 U.S.C. 2466a(a)(3)) authorizes the President to terminate the designation of a country as a beneficiary sub-Saharan African country for purposes of section 506A if he determines that the country is not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act, effective on January 1 of the year following the year in which such determination is made.

6. Pursuant to section 104 of the AGOA and section 506A(a)(1) of the 1974 Act, I have determined that the Republic of Angola (Angola) meets the eligibility requirements set forth or referenced therein, and I have decided to designate Angola as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country.

7. Angola satisfies the criterion for treatment as a ''lesser developed beneficiary sub-Saharan African country'' under section 112(b)(3)(B) of the AGOA.

8. Pursuant to section 506A(a)(3) of the 1974 Act, I have determined that Eritrea and the Central African Republic are not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act. Accordingly, I have decided to terminate the designation of Eritrea and the Central African Republic as beneficiary sub-Saharan African countries for purposes of section 506A of the 1974 Act, effective on January 1, 2004.

9. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other acts

affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

10. Section 203(e)(2)(A) of the Andean Trade Preference Act, as amended (ATPA) (19 U.S.C. 3202(e)(2)(A)), requires the President to publish in the **Federal Register** notice of any action he proposes to take under section 203(e)(1) of the ATPA (19 U.S.C. 3202(e)(1)) at least 30 days before taking the action. Section 212(e)(2)(A) of the Caribbean Basin Economic Recovery Act, as amended (CBERA) (19 U.S.C. 2702(e)(2)(A)), requires the President to publish in the **Federal Register** notice of any action he proposes to take under section 212(e)(1) of the CBERA (19 U.S.C. 2702(e)(1)) at least 30 days before taking the action. Proclamation 7616 of October 31, 2002, provided for the assignment of a publication function under these sections to the United States Trade Representative (USTR), but did not precisely specify the function assigned.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including sections 506A and 604 of the 1974 Act, section 104 of the AGOA, and section 301 of title 3, United States Code, do proclaim that:

(1) Angola is designated as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country.

(2) In order to reflect this designation in the HTS, general note 16(a) to the HTS is modified by inserting in alphabetical sequence in the list of beneficiary sub-Saharan African countries ''Republic of Angola.''

(3) For purposes of section 112(b)(3)(B) of the AGOA, Angola is a lesser developed beneficiary sub-Saharan African country.

(4) The designation of Eritrea and the Central African Republic as beneficiary sub-Saharan African countries for purposes of section 506A of the 1974 Act is terminated, effective on January 1, 2004.

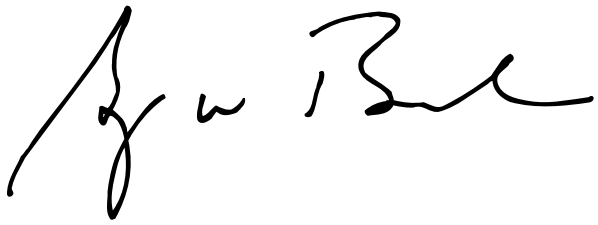
(5) In order to reflect in the HTS that beginning January 1, 2004, Eritrea and the Central African Republic shall no longer be designated as beneficiary sub-Saharan African countries, general note 16(a) to the HTS is modified by deleting ''State of Eritrea'' and ''Central African Republic'' from the list of beneficiary sub-Saharan African countries. Further, note 2(d) to subchapter XIX of chapter 98 of the HTS is modified by deleting ''State of Eritrea'' and ''Central African Republic'' from the list of lesser developed beneficiary sub-Saharan African countries.

(6) The modification to the HTS made by this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2004.

(7) In order to assign to the USTR the publication function set forth in section 203(e)(2)(A) of the ATPA and section 212(e)(2)(A) of the CBERA, paragraph (3) of Proclamation 7616 of October 31, 2002, is revised by deleting the phrase ''of this proclamation'' and inserting in lieu thereof the phrase ''of an action he proposes to take.''

(8) Any provisions of previous proclamations and Executive Orders that are inconsistent with this proclamation are superseded to the extent of such inconsistency.

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



[FR Doc. 03–32327
Filed 12–31–03; 11:22 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13322 of December 30, 2003

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(b), are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, as amended by section 1125 of Public Law 108–136, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive and Certain Other Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5311–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a), section 140 of Public Law 97–92, and Public Law 108–167) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to section 601(a)–(b) of Public Law 108–136, the rates of monthly basic pay (37 U.S.C. 203) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and the rate of monthly cadet or midshipman pay are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.*

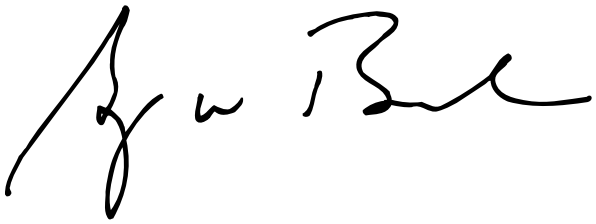
(a) Pursuant to sections 5304 and 5304a of title 5, United States Code, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the **Federal Register**.

Sec. 6. *Administrative Law Judges.* The rates of basic pay for administrative law judges, as adjusted under 5 U.S.C. 5372(b)(4), are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective on January 1, 2004. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2004.

Sec. 8. *Prior Order Superseded.* Executive Order 13282 of December 31, 2002, as amended by Executive Order 13291 of March 21, 2003, is superseded.



THE WHITE HOUSE,
December 30, 2003.

Billing code 3195–01–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

	1	2	3	4	5	6	7	8	9	10
GS-1	$15,442	$15,958	$16,471	$16,982	$17,497	$17,799	$18,305	$18,816	$18,837	$19,314
GS-2	17,363	17,775	18,350	18,837	19,047	19,607	20,167	20,727	21,287	21,847
GS-3	18,944	19,575	20,206	20,837	21,468	22,099	22,730	23,361	23,992	24,623
GS-4	21,266	21,975	22,684	23,393	24,102	24,811	25,520	26,229	26,938	27,647
GS-5	23,794	24,587	25,380	26,173	26,966	27,759	28,552	29,345	30,138	30,931
GS-6	26,522	27,406	28,290	29,174	30,058	30,942	31,826	32,710	33,594	34,478
GS-7	29,473	30,455	31,437	32,419	33,401	34,383	35,365	36,347	37,329	38,311
GS-8	32,640	33,728	34,816	35,904	36,992	38,080	39,168	40,256	41,344	42,432
GS-9	36,052	37,254	38,456	39,658	40,860	42,062	43,264	44,466	45,668	46,870
GS-10	39,702	41,025	42,348	43,671	44,994	46,317	47,640	48,963	50,286	51,609
GS-11	43,621	45,075	46,529	47,983	49,437	50,891	52,345	53,799	55,253	56,707
GS-12	52,281	54,024	55,767	57,510	59,253	60,996	62,739	64,482	66,225	67,968
GS-13	62,170	64,242	66,314	68,386	70,458	72,530	74,602	76,674	78,746	80,818
GS-14	73,467	75,916	78,365	80,814	83,263	85,712	88,161	90,610	93,059	95,508
GS-15	86,417	89,298	92,179	95,060	97,941	100,822	103,703	106,584	109,465	112,346

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

Step	class 1	class 2	class 3	class 4	class 5	class 6	class 7	class 8	class 9
1	$86,417	$70,023	$56,740	$45,976	$37,254	$33,304	$29,773	$26,616	$23,794
2	89,010	72,124	58,442	47,355	38,372	34,303	30,666	27,414	24,508
3	91,680	74,287	60,195	48,776	39,523	35,332	31,586	28,237	25,243
4	94,430	76,516	62,001	50,239	40,708	36,392	32,534	29,084	26,000
5	97,263	78,812	63,861	51,746	41,930	37,484	33,510	29,957	26,780
6	100,181	81,176	65,777	53,299	43,188	38,608	34,515	30,855	27,584
7	103,186	83,611	67,751	54,898	44,483	39,767	35,551	31,781	28,411
8	106,282	86,119	69,783	56,545	45,818	40,960	36,617	32,734	29,264
9	109,470	88,703	71,877	58,241	47,192	42,189	37,716	33,716	30,142
10	112,346	91,364	74,033	59,988	48,608	43,454	38,847	34,728	31,046
11	112,346	94,105	76,254	61,788	50,066	44,758	40,012	35,770	31,977
12	112,346	96,928	78,541	63,642	51,568	46,101	41,213	36,843	32,936
13	112,346	99,836	80,898	65,551	53,115	47,484	42,449	37,948	33,925
14	112,346	102,831	83,325	67,517	54,709	48,908	43,723	39,086	34,942

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

Deputy Under Secretary for Health	$146,760	**
Associate Deputy Under Secretary for Health	140,568	***
Assistant Under Secretaries for Health	136,424	***

	Minimum	Maximum	
Medical Directors	$116,398	$131,922	***
Service Directors	101,351	125,871	
Director, National Center for Preventive Health	86,417	125,871	

Physician and Dentist Schedule

Director Grade	$101,351	$125,871
Executive Grade	93,587	119,274
Chief Grade	86,417	112,346
Senior Grade	73,467	95,508
Intermediate Grade	62,170	80,818
Full Grade	52,281	67,968
Associate Grade	43,621	56,707

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$86,417	$112,346
Senior Grade	73,467	95,508
Intermediate Grade	62,170	80,818
Full Grade	52,281	67,968
Associate Grade	43,621	56,707

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

Director Grade	$86,417	$112,346
Assistant Director Grade	73,467	95,508
Chief Grade	62,170	80,818
Senior Grade	52,281	67,968
Intermediate Grade	43,621	56,707
Full Grade	36,052	46,870
Associate Grade	31,023	40,329
Junior Grade	26,522	34,478

* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Services. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $136,000.

*** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $127,300.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$103,700	$157,000
Agencies without a Certified SES Performance Appraisal System	$103,700	$144,600

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

Level I	$174,500
Level II	157,000
Level III	144,600
Level IV	136,000
Level V	127,300

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

Vice President	$201,600
Senators	157,000
Members of the House of Representatives	157,000
Delegates to the House of Representatives	157,000
Resident Commissioner from Puerto Rico	157,000
President pro tempore of the Senate	174,500
Majority leader and minority leader of the Senate	174,500
Majority leader and minority leader of the House of Representatives	174,500
Speaker of the House of Representatives	201,600

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004

Chief Justice of the United States	$201,600
Associate Justices of the Supreme Court	193,000
Circuit Judges	166,500
District Judges	157,000
Judges of the Court of International Trade	157,000

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES
(Effective on January 1, 2004)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
COMMISSIONED OFFICERS															
O-10 **	-	-	-	-	-	-	-	-	-	-	-	$12,524.70*	$12,586.20*	$12,847.80*	$13,303.80*
O-9	-	-	-	-	-	-	-	-	-	-	-	10,954.50	11,112.30	11,340.30	11,738.40
O-8	$7,751.10	$8,004.90	$8,173.20	$8,220.60	$8,430.30	$8,781.90	$8,863.50	$9,197.10	$9,292.80	$9,579.90	$9,995.70	10,379.10	10,635.30	10,635.30	10,635.30
O-7	6,440.70	6,739.80	6,878.40	6,988.50	7,187.40	7,384.20	7,611.90	7,839.00	8,066.70	8,781.90	9,386.10	9,386.10	9,386.10	9,386.10	9,433.50
O-6	4,773.60	5,244.30	5,588.40	5,588.40	5,609.70	5,850.00	5,882.10	5,882.10	6,216.30	6,807.30	7,154.10	7,500.90	7,698.30	7,897.80	8,285.40
O-5	3,979.50	4,482.90	4,793.40	4,851.60	5,044.80	5,161.20	5,415.90	5,602.80	5,844.00	6,213.60	6,389.70	6,563.40	6,760.80	6,760.80	6,760.80
O-4	3,433.50	3,974.70	4,239.90	4,299.00	4,545.30	4,809.30	5,137.80	5,394.00	5,571.60	5,673.60	5,733.00	5,733.00	5,733.00	5,733.00	5,733.00
O-3 ***	3,018.90	3,422.40	3,693.90	4,027.20	4,220.10	4,431.60	4,568.70	4,794.30	4,911.30	4,911.30	4,911.30	4,911.30	4,911.30	4,911.30	4,911.30
O-2 ***	2,608.20	2,970.60	3,421.50	3,537.00	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90
O-1 ***	2,264.40	2,356.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER AND/OR WARRANT OFFICER**															
O-3E	-	-	-	$4,027.20	$4,220.10	$4,431.60	$4,568.70	$4,794.30	$4,984.20	$5,092.80	$5,241.30	$5,241.30	$5,241.30	$5,241.30	$5,241.30
O-2E	-	-	-	3,537.00	3,609.90	3,724.80	3,918.60	4,068.60	4,180.20	4,180.20	4,180.20	4,180.20	4,180.20	4,180.20	4,180.20
O-1E	-	-	-	2,848.50	3,042.30	3,154.50	3,269.40	3,382.20	3,537.00	3,537.00	3,537.00	3,537.00	3,537.00	3,537.00	3,537.00

* Basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in section 161(c) of title 10, United States Code), basic pay for this grade is calculated to be $14,634.20 per month, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also quality for these rates.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
WARRANT OFFICERS															
W-5	-	-	-	-	-	-	-	-	-	-	-	$5,360.70	$5,544.30	$5,728.80	$5,914.20
W-4	$3,119.40	$3,355.80	$3,452.40	$3,547.20	$3,710.40	$3,871.50	$4,035.00	$4,194.30	$4,359.00	$4,617.30	$4,782.60	4,944.30	5,112.00	5,277.00	5,445.90
W-3	2,848.80	2,967.90	3,089.40	3,129.30	3,257.10	3,403.20	3,595.80	3,786.30	3,988.80	4,140.60	4,291.80	4,356.90	4,424.10	4,570.20	4,716.30
W-2	2,505.90	2,649.00	2,774.10	2,865.30	2,943.30	3,157.80	3,321.60	3,443.40	3,562.20	3,643.80	3,712.50	3,843.00	3,972.60	4,103.70	4,103.70
W-1	2,212.80	2,394.00	2,515.20	2,593.50	2,802.30	2,928.30	3,039.90	3,164.70	3,247.20	3,321.90	3,443.70	3,535.80	3,535.80	3,535.80	3,535.80
ENLISTED MEMBERS															
E-9 *	-	-	-	-	-	-	$3,769.20	$3,854.70	$3,962.40	$4,089.30	$4,216.50	$4,421.10	$4,594.20	$4,776.60	$5,054.70
E-8	-	-	-	-	-	$3,085.50	3,222.00	3,306.30	3,407.70	3,517.50	3,715.50	3,815.70	3,986.40	4,081.20	4,314.30
E-7	$2,145.00	$2,341.20	$2,430.60	$2,549.70	$2,642.10	2,801.40	2,891.10	2,980.20	3,139.80	3,219.60	3,295.50	3,341.70	3,498.00	3,599.10	3,855.00
E-6	1,855.50	2,041.20	2,131.20	2,218.80	2,310.00	2,516.10	2,596.20	2,685.30	2,763.30	2,790.90	2,809.80	2,809.80	2,809.80	2,809.80	2,809.80
E-5	1,700.10	1,813.50	1,901.10	1,991.10	2,130.60	2,250.90	2,339.70	2,367.90	2,367.90	2,367.90	2,367.90	2,367.90	2,367.90	2,367.90	2,367.90
E-4	1,558.20	1,638.30	1,726.80	1,814.10	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50
E-3	1,407.00	1,495.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50
E-2	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70
E-1 **	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40
E-1 ***	1,104.00	-	-	-	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $6,090.90 per month, regardless of cumulative years of service under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 3)

Part II-RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $792.60.

Note: As a result of the enactment of sections 602-694 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

Locality Pay Area[1]	Rate
Atlanta, GA	11.50%
Boston-Worcester-Lawrence, MA-NH-ME-CT-RI	15.73%
Chicago-Gary-Kenosha, IL-IN-WI	16.92%
Cincinnati-Hamilton, OH-KY-IN	14.04%
Cleveland-Akron, OH	12.10%
Columbus, OH	12.28%
Dallas-Fort Worth, TX	12.74%
Dayton-Springfield, OH	11.17%
Denver-Boulder-Greeley, CO	15.46%
Detroit-Ann Arbor-Flint, MI	17.02%
Hartford, CT	16.41%
Houston-Galveston-Brazoria, TX	21.49%
Huntsville, AL	10.58%
Indianapolis, IN	10.30%
Kansas City, MO-KS	10.73%
Los Angeles-Riverside-Orange County, CA	18.57%
Miami-Fort Lauderdale, FL	14.45%
Milwaukee-Racine, WI	11.73%
Minneapolis-St. Paul, MN-WI	13.54%
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA	17.73%
Orlando, FL	10.12%
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	14.12%
Pittsburgh, PA	11.03%
Portland-Salem, OR-WA	13.60%
Richmond-Petersburg, VA	11.25%
Sacramento-Yolo, CA	13.98%
St. Louis, MO-IL	10.46%
San Diego, CA	14.84%
San Francisco-Oakland-San Jose, CA	22.23%
Seattle-Tacoma-Bremerton, WA	13.85%
Washington-Baltimore, DC-MD-VA-WV	13.43%
Rest of U.S.	10.09%

SCHEDULE 10-ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

AL-3/A	$90,500
AL-3/B	97,400
AL-3/C	104,400
AL-3/D	111,400
AL-3/E	118,300
AL-3/F	125,300
AL-2	132,400
AL-1	136,000

[1]Locality Pay Areas are defined in 5 CFR 531.603.

[FR Doc. 03–32328

Filed 12–31–03; 11:22 am]

Billing code 6325–01–C

Presidential Documents

Executive Order 13323 of December 30, 2003

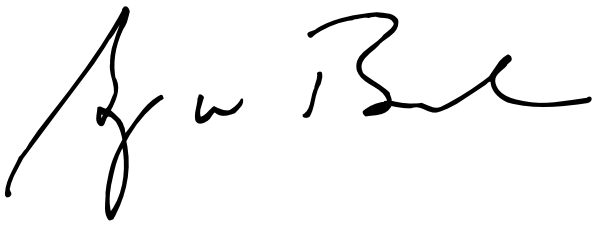
Assignment of Functions Relating to Arrivals in and Departures From the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 215 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1185), and section 301 of title 3, United States Code, and to strengthen the national security of the United States through procedures and systems to manage and control the arrival and departure of persons from the United States, it is hereby ordered as follows:

Section 1. *Functions of the Secretary of Homeland Security.* The Secretary of Homeland Security is assigned the functions of the President under section 215(a) of the INA with respect to persons other than citizens of the United States. In exercising these functions, the Secretary of Homeland Security shall not issue, amend, or revoke any rules, regulations, or orders without first obtaining the concurrence of the Secretary of State.

Sec. 2. *Functions of the Secretary of State.* The Secretary of State is assigned the functions of the President under section 215(a) and (b) of the INA with respect to citizens of the United States, including those functions concerning United States passports. In addition, the Secretary may amend or revoke part 46 of title 22, Code of Federal Regulations, which concern persons other than citizens of the United States. In exercising these functions, the Secretary of State shall not issue, amend, or revoke any rules, regulations, or orders without first consulting with the Secretary of Homeland Security.

Sec. 3. *Judicial Review.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.



THE WHITE HOUSE,
December 30, 2003.

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 2, 2004

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  - Digital broadcast television redistribution control; digital broadcast content protection; published 12-3-03

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  - Gulf of Alaska groundfish; published 12-5-03

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Mortgage revenue bonds; public hearing; comments due by 1-7-04; published 11-5-03 [FR 03-27866]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:

Eola Hills, OR; comments due by 1-6-04; published 11-7-03 [FR 03-28062]

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 108th Congress has been completed. It will resume when bills are enacted into public law during the next session of Congress. A cumulative List of Public Laws for the first session of the 108th Congress will appear in the issue of January 30, 2004.

Last List December 24, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 2004

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Jan 2	Jan 20	Feb 2	Feb 17	March 2	April 1
Jan 5	Jan 20	Feb 4	Feb 19	March 5	April 5
Jan 6	Jan 21	Feb 5	Feb 20	March 8	April 5
Jan 7	Jan 22	Feb 6	Feb 23	March 8	April 6
Jan 8	Jan 23	Feb 9	Feb 23	March 8	April 7
Jan 9	Jan 26	Feb 9	Feb 23	March 9	April 8
Jan 12	Jan 27	Feb 11	Feb 26	March 12	April 12
Jan 13	Jan 28	Feb 12	Feb 27	March 15	April 12
Jan 14	Jan 29	Feb 13	March 1	March 15	April 13
Jan 15	Jan 30	Feb 17	March 1	March 15	April 14
Jan 16	Feb 2	Feb 17	March 1	March 16	April 15
Jan 20	Feb 4	Feb 19	March 5	March 22	April 19
Jan 21	Feb 5	Feb 20	March 8	March 22	April 20
Jan 22	Feb 6	Feb 23	March 8	March 22	April 21
Jan 23	Feb 9	Feb 23	March 8	March 23	April 22
Jan 26	Feb 10	Feb 25	March 11	March 26	April 26
Jan 27	Feb 11	Feb 26	March 12	March 29	April 26
Jan 28	Feb 12	Feb 27	March 15	March 29	April 27
Jan 29	Feb 13	March 1	March 15	March 29	April 28
Jan 30	Feb 17	March 1	March 15	March 30	April 29