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Vol. 70 No. 198 Oct. 14, 2005

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WHO: Sponsored by the Office of the Federal Register.

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3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, October 25, 2005
9:00 a.m.-Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008

Contents

Federal Register
Vol. 70, No. 198
Friday, October 14, 2005

Separate Parts In This Issue

Part II
Environmental Protection Agency, 60134–60202

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

12 CFR
34.....59987
225.....59987
323.....59987
564.....59987
722.....59987
Proposed Rules:
307.....60015
331.....60019
362.....60019

14 CFR
25.....59988
71 (4 documents).....59990, 59992, 60132

16 CFR
Proposed Rules:
Ch. II.....60031

26 CFR
1.....60132

27 CFR
9 (2 documents).....59993, 59996

29 CFR
4022.....60002
4044.....60002

31 CFR
29.....60003

33 CFR
165.....60004

39 CFR
Proposed Rules:
111.....60036

40 CFR
9.....60134
52 (2 documents).....60008, 60010
122.....60134
403.....60134
Proposed Rules:
52 (2 documents).....60036, 60037
403.....60199

45 CFR
Proposed Rules:
302.....60038
303.....60038
307.....60038

50 CFR
222.....60013
223.....60013
Proposed Rules:
17.....60051
21.....60052
622.....60058

Rules and Regulations

Federal Register
Vol. 70, No. 198
Friday, October 14, 2005

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

FEDERAL RESERVE SYSTEM

12 CFR Part 225

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 564

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

Real Estate Appraisal Exceptions in Major Disaster Areas

AGENCIES: Office of the Comptroller of the Currency, Treasury Department (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury Department (OTS); and National Credit Union Administration (NCUA), collectively referred to as "the Agencies."

ACTION: Statement and Order; temporary exceptions.

SUMMARY: Section 2 of the Depository Institutions Disaster Relief Act of 1992 (DIDRA) authorizes the Agencies to make exceptions to statutory and regulatory requirements relating to appraisals for certain transactions. The exceptions are available for transactions that involve real property in major disaster areas when the exceptions would facilitate recovery from the disaster and would be consistent with safety and soundness. In this notice, the Agencies grant exceptions for certain real estate-related transactions in areas affected by Hurricanes Katrina and Rita. The expiration dates for the exceptions are set out in the **SUPPLEMENTARY INFORMATION** section.

DATES: This order is effective on October 14, 2005 and expires for specific areas on the dates indicated in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

OCC

Dena G. Patel, Credit Risk Specialist, (202) 874–5170, Office of the Chief National Bank Examiner; or Sue Auerbach, Counsel, (202) 874–5300, Chief Counsel's Office, 250 E Street, SW., Washington, DC 20219.

Board

Virginia M. Gibbs, Senior Supervisory Financial Analyst, (202) 452–2521, Division of Banking Supervision and Regulation; or April Snyder, Attorney, (202) 452–3099, Legal Division. Mail: Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC, 20551.

FDIC

James D. Leitner, Examination Specialist, (202) 898–6790, Division of Supervision and Consumer Protection; or Mark G. Flanigan, Counsel, (202) 898–7426, Legal Division, 550 17th Street, NW., Washington, DC 20429.

OTS

Deborah Merkle, Project Manager, Credit Policy, (202) 906–5688; Karen Osterloh, Special Counsel, Regulation and Legislation Division, Chief Counsel's Office, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NCUA

Regina Metz, Staff Attorney, Office of General Counsel, (703) 518–6540; or Anthony LaCreta, Deputy Director, Office of Examination and Insurance, (703) 518–6360, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

Statement

Section 2 of DIDRA, 12 U.S.C. 3352, authorizes the Agencies to make exceptions to statutory and regulatory appraisal requirements for certain transactions. These exceptions are available for real property located in areas that the President has determined, pursuant to 42 U.S.C. 5170, that a major disaster exists, provided that the exception would facilitate recovery from the major disaster and is consistent with safety and soundness.[1] Such exceptions expire not later than three years after the date of the President's determination that a major disaster exists in the area.

On August 29, and September 24, 2005, the President declared several areas in certain Alabama, Mississippi, and Texas counties and Louisiana parishes as Major Disaster Areas and individual assistance was authorized by the Federal Emergency Management Agency ("FEMA") as a result of the extensive damage caused by Hurricanes Katrina and Rita. The Agencies believe that granting relief from the appraisal requirements for real estate transactions in certain designated disaster areas is consistent with the provisions of DIDRA.[2]

The Agencies have determined that the disruption of real estate markets in those FEMA-designated disaster areas interferes with the ability of depository institutions to obtain appraisals that comply with statutory and regulatory requirements. Therefore, the Agencies have determined that the disruption may impede institutions in making loans and engaging in other transactions that would aid in the reconstruction and rehabilitation of the affected areas. Accordingly, the Agencies have determined that recovery from these two major disasters would be facilitated by excepting certain transactions involving real estate located in the areas directly affected by the hurricanes from the real estate appraisal requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended, and the regulations promulgated thereunder.

[1] The agencies must make the exception no later than 30 months after the date on which the President determines that a major disaster exists in the area.

[2] Those counties and parishes designated by FEMA as receiving "Individual and Public Assistance (all categories)" and "Individual and Public Assistance (Categories A and B)."

This order has the effect of excepting the transactions specified below from the definition of "federally related transactions" in Title XI of FIRREA and the agencies' appraisal regulations, and thereby from the statutory and regulatory real estate appraisal requirements for such transactions.

The Agencies also have determined that the exceptions are consistent with safety and soundness, subject to the requirement that the depository institution's records relating to any excepted transaction appropriately document the following: (1) The property involved was directly affected by the major disaster or the transaction would facilitate recovery from the disaster; (2) there is a binding commitment to fund the transaction that is made within three years after the date the major disaster was declared; and (3) the value of the real property supports the institution's decision to enter into the transaction. In addition, the transaction must continue to be subject to review by management and by the Agencies in the course of examinations of the institution.

Expiration Dates

Exceptions provided under this order expire not later than three years after the date on which the President determines, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170 (DREAA), that a major disaster exists in the area. Accordingly, exceptions for the major disasters declared due to Hurricane Katrina expire on August 29, 2008, in Alabama, Mississippi and Louisiana; and exceptions for the major disasters declared due to Hurricane Rita expire on September 24, 2008, in Louisiana and Texas.

Order

In accordance with section 2 of DIDRA, relief is hereby granted from the provisions of Title XI of FIRREA and the agencies' appraisal regulations for any real estate-related financial transaction that requires the services of an appraiser under those provisions, provided that:

(1) The transaction involves real property located in an area that the President has determined, pursuant to section 401 of DREAA, is a major disaster area as a result of Hurricane Katrina (August 2005) in Alabama, Louisiana, and Mississippi; or as a result of Hurricane Rita (September 2005) in Louisiana and Texas, and has been designated eligible for federal assistance by FEMA; [3]

(2)(a) The real property involved was directly affected by the major disaster; or

(2)(b) The real property involved was not directly affected by the major disaster but the transaction would facilitate recovery from the disaster;

(3) There is a binding commitment to fund a transaction that is made within three years after the date the major disaster was declared by the President; and

(4) The institution retains in its files, for examiner review, appropriate documentation indicating that the requirements of Items (1)–(3) above are met and supporting the valuation of the real property involved in the transaction.

Appendix

Counties and parishes designated by FEMA as receiving "Individual and Public Assistance (all categories)" and "Individual and Public Assistance (Categories A and B)"

Hurricane Katrina

Alabama: Baldwin, Choctaw, Clarke, Greene, Hale, Mobile, Pickens, Sumter, Tuscaloosa and Washington

Louisiana: Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana

Mississippi: Adams, Amite, Attala, Choctaw, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Winston, and Yazoo.

Hurricane Rita

Louisiana: Acadia, Allen, Beauregard, Calcasieu, Cameron, Iberia, Jefferson Davis, Lafayette, Lafourche, St. Mary, Terrebonne, and Vermilion

Texas: Chambers, Galveston, Hardin, Jasper, Jefferson, Liberty, Newton, Orange, and Tyler

Dated: October 5, 2005.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Dated: October 4, 2005.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 4th day of October, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: October 6, 2005.

By the Office of Thrift Supervision.

John M. Reich,

Director.

By order of the National Credit Union Administration.

Dated: October 4, 2005.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 05–20583 Filed 10–13–05; 8:45 am]

BILLING CODE 6714–01–P; 4810–33–P; 6210–01–P; 6720–01–P; 7535–01–P

[3] Those areas designated by FEMA as receiving "Individual and Public Assistance (all categories)" and "Individual and Public Assistance (Categories A and B)" in Alabama, Mississippi, and Texas counties and Louisiana parishes, as listed in the appendix to this order.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM334; Special Conditions No. 25–305–SC]

Special Conditions: Dassault-Aviation Mystere-Falcon 50 Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Dassault-Aviation Mystere-Falcon 50 airplanes modified by Chippewa Aerospace, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a Honeywell Primus Epic Control Display System for Retrofit (CDS–R) that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 4, 2005. Comments must be received on or before November 14, 2005.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM334, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM334.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

On January 5, 2005, Chippewa Aerospace, Inc., 1601 Executive Avenue, Myrtle Beach, South Carolina, 29577, applied for a supplemental type certificate (STC) to modify Dassault-Aviation Mystere-Falcon 50 airplanes. This model is currently approved under Type Certificate No. A46EU. The Dassault-Aviation Mystere-Falcon 50 airplanes are transport category airplanes powered by three Allied Signal TFE–731–3–1C turbine engines with maximum takeoff weights of up to 40,780 pounds. These airplanes operate with a 2-pilot crew and can seat up to 19 passengers. The modification incorporates the installation of a Honeywell Primus Epic Control Display System for Retrofit (CDS–R). This system performs a critical function whose failure would prevent the continued safe flight and landing of the airplane. The integrated flightdeck display system that will be installed in this airplane has the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Chippewa Aerospace, Inc. must show that the Dassault-Aviation Mystere-Falcon 50 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A46EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for Dassault-Aviation Mystere-Falcon 50 airplanes includes applicable sections of 14 CFR part 25 as amended by Amendment 25–1 through Amendment 25–34, Special Conditions No. 25–86–EU–24, 14 CFR part 36 as amended by Amendment 36–1 through Amendment 36–9, and SFAR 27 as amended by Amendment 27–1. In addition, the certification basis includes certain special conditions, exemptions, equivalent levels of safety, or later amended sections of the applicable part 25 that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for Dassault-Aviation Mystere-Falcon 50 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Dassault-Aviation Mystere-Falcon 50 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Special conditions are initially applicable to the model for which they are issued. Should Chippewa Aerospace, Inc. apply at a later date for a STC to modify any other model included on Type Certificate No A46EU to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, the Dassault-Aviation Mystere-Falcon 50 airplanes modified by Chippewa Aerospace, Inc. will incorporate a Honeywell Primus Epic CDS–R that will perform critical functions. This system may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Dassault-Aviation Mystere-Falcon 50 airplanes modified by Chippewa Aerospace, Inc. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

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

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

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

Applicability

As discussed above, these special conditions are applicable to Dassault-Aviation Mystere-Falcon 50 airplanes modified by Chippewa Aerospace, Inc. Should Chippewa Aerospace, Inc. apply at a later date for a STC to modify any other model included on Type Certificate No. A46EU to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Dassault-Aviation Mystere-Falcon 50 airplanes modified by Chippewa Aerospace, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Dassault-Aviation Mystere-Falcon 50 airplanes modified by Chippewa Aerospace, Inc.

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

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 4, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20629 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20322; Airspace Docket No. 05–ANM–1]

RIN 2120–AA66

Establishment and Revision of Area Navigation (RNAV) Routes; Western United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes three area navigation (RNAV) routes and revises one existing RNAV route in the Western United States (U.S.) in support of the High Altitude Redesign (HAR) program. The FAA originally proposed to revise two area navigation routes as part of this action, but one revised route (Q–11) was deleted because the proposed change provided limited benefit. The FAA is taking this action to enhance safety and to improve the efficient use of the navigable airspace in the Western U.S.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On May 25, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish three and revise two "Q" routes in the Western U.S. Interested

parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received in response the NPRM.

In reviewing the configuration of the proposed revision to Q–11, the FAA determined that revision of this route as proposed was not required. The proposed revision to Q–11 is withdrawn. With the exception of editorial changes, and the change discussed above, this amendment is the same as that proposed in the notice.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing three RNAV routes and revising one existing route in the Western United States within the airspace assigned to the Seattle and Los Angeles Air Route Traffic Control Centers (ARTCC). These routes were developed as part of the HAR program to allow more efficient routings. They are being established to enhance safety, and to facilitate the more flexible and efficient use of the navigable airspace for en route instrument flight rules (IFR) operations within the Los Angeles and Seattle ARTCC area of responsibility.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 2006 Area Navigation Routes

* * * * *

Q–13 PAWLI to PRFUM [Revised]

PRFUM	WP	(Lat. 35°30′24″N., long. 113°56′35″W.)
CENIT	WP	(Lat. 36°41′02″N., long. 116°26′31″W.)
TUMBE	WP	(Lat. 36°48′20″N., long. 116°40′03″W.)
TACUS	WP	(Lat. 37°05′16″N., long. 116°54′12″W.)
WODIN	WP	(Lat. 37°19′20″N., long. 117°05′25″W.)
LEAHI	WP	(Lat. 37°28′58″N., long. 117°14′57″W.)
LOMIA	WP	(Lat. 39°13′12″N., long. 119°06′23″W.)
RUFUS	WP	(Lat. 41°26′00″N., long. 120°00′00″W.)
PAWLI	WP	(Lat. 43°10′48″N., long. 120°55′50″W.)

Q–15 CHILY to LOMIA [New]

CHILY	WP	(Lat. 34°42′49″N., long. 112°45′42″W.)
DOVEE	WP	(Lat. 35°26′51″N., long. 114°48′01″W.)
BIKKR	WP	(Lat. 36°34′00″N., long. 116°45′00″W.)
DOBNE	WP	(Lat. 37°14′23″N., long. 117°15′04″W.)
RUSME	WP	(Lat. 37°29′39″N., long. 117°31′12″W.)
LOMIA	WP	(Lat. 39°13′12″N., long. 119°06′23″W.)

Q–2 BOILE to EWM [New]

BOILE	WP	(Lat. 34°25′21″N., long. 118°01′33″W.)
HEDVI	WP	(Lat. 33°32′23″N., long. 114°28′14″W.)
HOBOL	WP	(Lat. 33°11′30″N., long. 112°20′00″W.)
ITUCO	WP	(Lat. 32°26′30″N., long. 109°46′26″W.)
EWM	VORTAC	(Lat. 31°57′06″N., long. 106°16′21″W.)

Q–4 BOILE to ELP [New]

BOILE	WP	(Lat. 34°25′21″N., long. 118°01′33″W.)
HEDVI	WP	(Lat. 33°32′23″N., long. 114°28′14″W.)
SCOLE	WP	(Lat. 33°27′46″N., long. 114°04′54″W.)
SPTFR	WP	(Lat. 33°23′49″N., long. 113°43′29″W.)
ZEBOL	WP	(Lat. 33°03′30″N., long. 112°31′00″W.)
SKTTR	WP	(Lat. 32°17′38″N., long. 109°50′44″W.)
ELP	VORTAC	(Lat. 31°48′57″N., long. 106°16′55″W.)

* * * * *

Issued in Washington, DC, on October 6, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–20627 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21874; Airspace Docket No. 05–ACE–28]

Modification of Class E Airspace; Dodge City Regional Airport, KS; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects an error in the legal description of a direct final rule, request for comments that was published in the **Federal Register** on Friday, July 29, 2005 (70 FR 43744).

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 2005–21874 published on Friday, July 29, 2005 (70 FR 43744), modified Class E Airspace at Dodge City, KS. The latitude and longitude used in the airport reference point was incorrect. This action corrects that error.

■ Accordingly, pursuant to the authority delegated to me, the errors for Class E Airspace, Dodge City, KS as published in the **Federal Register** Friday, July 29, 2005 (70 FR 43744), (FR Doc. 2005–21874), are corrected as follows:

§ 71.1 [Corrected]

■ On page 43745, Column 2, change the latitude and longitude of Dodge City Regional Airport, KS to (Lat. 37°45′48″ N., long 99°57′56″ W.) for ACE KS E2 and ACE KS E5.

Issued in Kansas City, MO, on September 28, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–20628 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13994; Airspace Docket No. 02–AAL–10]

RIN 2120–AA66

Establishment of Colored Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes two colored Federal airways, Amber-5 (A–5) and Blue 1 (B–1), in Alaska. This action adds to the instrument flight rules (IFR) airway and route structure in Alaska. The FAA is taking this action to enhance safety and the management of aircraft operations in Alaska.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On January 30, 2003, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Colored Federal Airways (68 FR 4741). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. With the exception of editorial changes, this amendment is the same as that proposed in the notice.

Colored Federal airways are published in paragraph 6009 of FAA Order 7400.9N dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The colored Federal airways listed in this document would be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing two colored Federal airways, A–5 and B–1, in Alaska. Presently there are several uncharted non-regulatory routes that use the same routing as the new colored Federal airways. These uncharted non-regulatory routes are used daily by commercial and general aviation aircraft. However, the air traffic control (ATC) management of aircraft operations is limited on these routes. The FAA is converting these uncharted non-regulatory routes to the colored Federal airways. This action adds to the IFR airway and route structure in Alaska.

Additionally, adoption of these Federal airways: (1) Provide pilots with minimum en route altitudes and minimum obstruction clearance altitudes information; (2) establishes controlled airspace thus eliminating some of the commercial IFR operations in uncontrolled airspace; and (3) improves the management of air traffic operations and thereby enhances safety.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6009(c)—Amber Federal Airways.

* * * * *

A–5 [New]

From Ambler, AK, NDB to Evansville, AK, NDB.

* * * * *

Paragraph 6009(d)—Blue Federal Airways.

* * * * *

B–1 [New]

From Woody Island, AK, NDB to Iliamna, AK, NDB.

* * * * *

Issued in Washington, DC, on October 6, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–20630 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–34; Re: Notice No. 37]

RIN 1513–AA95

Establishment of the Dos Rios Viticultural Area (2004R–0173P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the Dos Rios viticultural area in Mendocino County, California. The proposed 15,500-acre viticultural area is 150 miles north of San Francisco, California. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

EFFECTIVE DATE: November 14, 2005.

FOR FURTHER INFORMATION CONTACT: Nancy Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, California 94952; telephone (415) 271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

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

Dos Rios Petition and Rulemaking

General Background

TTB received a petition from Ralph Jens Carter of Sonoma, California, proposing the establishment of a new viticultural area to be called "Dos Rios" in northern Mendocino County, California. Located at the confluence of the Eel River and the Middle Fork of the Eel River, the proposed 15,500-acre Dos Rios viticultural area is approximately 40 miles north of Ukiah, 25 miles east of the Pacific Ocean, and 5 miles north of the northern boundary of the established North Coast viticultural area (27 CFR 9.30). The proposed Dos Rios viticultural area encompasses portions of the canyons containing the two rivers. Currently, six acres of commercial vineyards are planted within the proposed area, with the potential for additional plantings.

Below, we summarize the evidence presented in the Dos Rios viticultural area petition.

Name Evidence

"Dos Rios" is Spanish for "two rivers," according to the Harper Collins Spanish College Dictionary, Fourth Edition, published in 2002. The USGS Dos Rios Quadrangle map shows the small village of Dos Rios at the confluence of the Middle Fork of the Eel River and the main channel of the Eel River. The November 2002 California State Automobile Association map and the 2003 California Compass Map show Dos Rios village along State Highway 162 east of Laytonville, California.

The local GTE telephone directory lists Dos Rios and includes its 95429 zip code. The local Vin DeTevis winery letterhead indicates its location on Covelo Road in Dos Rios. A 1982 photograph from the book entitled "The Northwestern Pacific Railroad and Its Successors," by Wesley Fox (Fox Publications, Arvada, Colorado), shows, according to its caption, a southbound freight train "rolling along the rocky edges of the Eel River, south of Dos Rios."

Boundary Evidence

The proposed Dos Rios viticultural area encompasses the confluence of the

Eel and the Middle Fork of the Eel Rivers, portions of the Eel River canyon to the north and south of the confluence, and a portion of the Middle Fork canyon east of the confluence. The proposed area also includes portions of the side canyons of several seasonal tributaries. The proposed viticultural area covers about 15,500 acres, and it is approximately 12 miles long east to west and 4 miles wide north to south.

The 2,000-foot contour line defines the outer limits of the proposed Dos Rios viticultural area. Section lines shown on the USGS maps of the proposed area connect the 2,000 foot contour lines across the two rivers as the contour lines pass out of the Dos Rios area. The 2,000-foot contour line marks the upper limit of the microclimate created by the proposed area's canyon geography. Above the 2,000-foot contour line, the climate becomes colder and less conducive to viticulture.

The northern boundary of the proposed Dos Rios viticultural area coincides with the Round Valley Indian Reservation southern boundary where it crosses the Eel River north of the village of Dos Rios. According to the 1971 Hubbard Scientific 3-dimensional map of the Ukiah, California, region, this portion of the proposed area includes more gentle, less eroded slopes.

The eastern region of the proposed viticultural area includes mildly steep slopes close to the Middle Fork of the Eel River. This portion of the proposed area has warmer temperatures due to sunlight reflected from the Middle Fork of the Eel River onto the surrounding slopes and canyon walls. Beyond the eastern boundary the higher, colder elevations of the Mendocino National Forest dominate the landscape.

The southern boundary line of the proposed area is approximately 3 miles south of the village of Dos Rios. This portion of the proposed area has significant winds and light reflection from the rivers, which moderate its climate.

The western boundary of the proposed Dos Rios viticultural area is approximately one mile west of the village of Dos Rios and coincides with the steep "Windy Point" geographical feature shown on the USGS Laytonville map. Mountain terrain less influenced by the canyon geography of the proposed area lies beyond its western boundary.

Distinguishing Features

Geography

Significant physical features of the proposed Dos Rios viticultural area include the Eel River and the Middle Fork of the Eel River and their surrounding canyons, which join within the proposed area. The canyon surrounding the confluence of the two rivers is a "land trough," approximately one-half mile deep and 3 miles wide. This land trough is shown on the relevant USGS maps and in multiple dimensions on the Hubbard Scientific Ukiah region topographic map. As a land trough, the Eel and Middle Fork river canyons are the only major gaps in the Coast Range in this region of Mendocino County. These gaps allow the Pacific Ocean marine air to blow inland, or east, through the canyons and into the proposed Dos Rios viticultural area.

The names of several prominent geographic features within the proposed Dos Rios viticultural area reflect the strength of the wind blowing through the canyons. The USGS maps covering the proposed area show two different geographic features named "Windy Point" within the proposed area and another named "Windy Ridge" near the proposed area's eastern boundary. On the USGS Laytonville map, one Windy Point is near the 1,800-foot elevation in the southwest corner of section 36, T22N, R14W. On the USGS Dos Rios map, a second Windy Point is near the 1,400-foot elevation line between State Highway 162 and the Middle Fork of the Eel River, T21N, R13W. "Windy Ridge," with elevations between 2,600 feet and 3,200 feet, is immediately outside the proposed area's eastern boundary on the USGS Covelo West map, section 18, T22N, R13W.

The canyon walls and hillsides surrounding the Eel River and the Middle Fork of the Eel River incline from 30 to 75 percent. In addition to the climate-moderating marine winds, sunlight reflecting off the two rivers onto the steep sides of the canyons warms the terrain of the canyons below the 2,000-foot contour line.

Climate

The marine winds blowing through the canyons within the proposed Dos Rios viticultural area, the direct and reflected solar radiation, and the temperature are the factors that distinguish the proposed area from the surrounding regions of Mendocino County. The "Sunset Western Garden Book," 7th edition, 2001, (Sunset book) which divides much of the western United States into growing zones, includes the region encompassing the proposed Dos Rios viticultural area within California's Zone 14, Northern California's Inland Areas with Some Ocean Influence, a transitional climate area. The Sunset book depicts this zone as a narrow geographic region surrounded by three cooler zones. The close proximity of four climate zones to the proposed Dos Rios viticultural area also helps create a unique transitional microclimate within the proposed area.

Wind: As noted above, the presence of strong winds in the proposed Dos Rios viticultural area is reflected in the "windy" names given to several geographic features within or near its boundary. The Eel River and Middle Fork of the Eel River canyons create gaps in the Coast Range, which lies between the moderating Pacific Ocean climate to the west and the more continental climate found at the higher elevations and in the interior valleys to the east. These canyons bring climate-moderating Pacific marine air further inland than would be expected without these low-elevation gaps and allow the moderating ocean air into the Dos Rios region, affecting the climate of the proposed viticultural area.

Geographic slopes also affect airflow, according to the Sunset book description of how the local terrain can affect wind flow and solar heat. Warm air rises and cold air sinks, creating vertical wind movements on the 800-foot to 2,000-foot sloping elevations found within the proposed viticultural area.

During the spring and summer months, the proposed viticultural area has brisk afternoon breezes that intensify at sunset and subside after dark, allowing temperatures to cool. The winds help disperse the morning coastal fog that reaches over the surrounding mountain ranges, giving the Dos Rios region sunny mornings that contrast with the foggier mornings found in the surrounding Covelo and Willits regions. During the winter the winds create a downdraft from the hilltops to the canyon floor that lessens the effects of freezing temperatures and frost in the vineyards.

Solar Radiation: Reflective sunlight off the water of the two rivers provides additional warming to the hillside vineyards within the proposed Dos Rios viticultural area. The intensity of the reflected sunlight dissipates above 2,000 feet in elevation, which coincides with the proposed area's boundary line.

Temperature: Temperatures within the proposed Dos Rios viticultural area annually average 52 to 58 degrees, with warm, dry summers and cool, wet winters. The marine breezes blowing through the canyons of the proposed viticultural area moderate temperatures, making the Dos Rios region cooler in the summer and warmer in the winter than regions to the east that have a more

continental climate. The frost-free growing season varies from 125 days to 250 days annually.

According to the Sunset book, three cooler Sunset climate zones surround the proposed Dos Rios viticultural area and its transitional Zone 14 climate. These three climates include Zone 1, Coldest Winters in the West, Zone 2, Second Coldest Western Climate, and Zone 7, California's Digger Pine Belt. Zones 1 and 2 are the snowiest and coldest parts of the United States West Coast, excluding Alaska. Zone 7, found at lower mountain elevations, has hot summers and mild, but pronounced, winters. The Sunset book climate zone map shows the Dos Rios area as having a generally colder climate and a shorter growing season than the lower Mendocino County elevations.

Rainfall and Snow: The proposed Dos Rios viticultural area averages 30 to 60 inches of rainfall each year with most rainfall occurring between October and April. The proposed area also receives occasional light snow, while the surrounding higher elevations receive more snow.

Soils

Soils of the proposed Dos Rios viticultural area are well-drained to excessively well-drained loams, sandy loams, and gravelly loams that are deep to very deep. These soils are categorized as poor, with coarse texture and limited water retention. They are weathered from sandstone, siltstone, schist, and greywacke, which are rich in mineral nutrients. The soils within the proposed Dos Rios viticultural area differ from other nearby grape-growing regions such as the Potter Valley viticultural area (27 CFR 9.82), which have Cole series soils that are poorly drained, nearly level clay loams.

Notice of Proposed Rulemaking and Comments Received

On March 31, 2005, TTB published a notice of proposed rulemaking regarding the establishment of the Dos Rios viticultural area in the **Federal Register** as Notice No. 37 (70 FR 16455). In that notice, TTB requested comments by May 31, 2005, from all interested persons. TTB received 14 comments in response, all supporting establishment of the proposed Dos Rios viticultural area.

TTB Finding

After careful review of the petition and the comments received, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the "Dos Rios" viticultural area in Mendocino County, California, effective 30-days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, "Dos Rios," is recognized as a name of viticultural significance. Consequently, wine bottlers using "Dos Rios" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

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

Executive Order 12866

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

Drafting Information

Nancy Sutton of the Regulations and Rulings Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend subpart C by adding § 9.175 to read as follows:

§ 9.175 Dos Rios.

(a) *Name.* The name of the viticultural area described in this section is "Dos Rios". For purposes of part 4 of this chapter, "Dos Rios" is a term of viticultural significance.

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Dos Rios viticultural area are four United States Geological Survey 1:24,000 scale topographic maps. They are titled:

(1) Dos Rios, California—Mendocino County, 1967 edition, revised 1994;

(2) Laytonville, California—Mendocino County, 1967 edition, revised 1994;

(3) Iron Peak, California—Mendocino County, 1967 edition. revised 1994; and

(4) Covelo West, California—Mendocino County, 1967 edition, photoinspected 1973.

(c) *Boundary.* The Dos Rios viticultural area is located in northern Mendocino County, California, at the confluence of the Eel River and the Middle Fork of the Eel River. The area's boundaries are defined as follows—

(1) Beginning in the northwestern quarter of the Dos Rios map in section 32, T22N, R13W, at the intersection of the 2,000-foot contour line and Poonkinny Road, proceed southerly and then easterly along the meandering

2,000-foot contour line to its intersection with the eastern boundary of section 2, T21N, R13W, immediately south of State Route 162 (Dos Rios Quadrangle); then

(2) Proceed straight south along the section line, crossing the Middle Fork of the Eel River, to the southeast corner of section 11, T21N, R13W (Dos Rios Quadrangle); then

(3) Proceed 0.9 mile straight west along the southern boundary of section 11 to its intersection with the 2,000-foot elevation line, T21N, R13W (Dos Rios Quadrangle); then

(4) Proceed northerly then westerly along the meandering 2,000-foot contour line, crossing Big Water Canyon, Doghouse Creek, and Eastman Creek, to the contour line's intersection with the southern boundary of section 17, T21N, R13W (Dos Rios Quadrangle); then

(5) Proceed 2.1 miles straight west along the section line, crossing the Eel River, to the section line's intersection with the 2,000-foot contour line along the southern boundary of section 18, T21N, R13W (Dos Rios Quadrangle); then

(6) Proceed northerly along the meandering 2,000-foot contour line, crossing between the Dos Rios and Laytonville maps (passing around the Sims 2208 benchmark near the southeast corner of section 36, T22N, R14W), and, returning to the Laytonville map, continue westerly to the contour line's intersection with the southwest corner of section 36, T22N, R14W, at Windy Point (Laytonville Quadrangle); then

(7) Proceed 1.2 miles straight north along the section line to its intersection with the 2,000-foot elevation line, section 25, T22N, R14W (Laytonville Quadrangle); then

(8) Proceed northerly along the meandering 2,000-foot elevation, crossing between the Laytonville and Iron Peak maps, and, returning to the Iron Peak map, continue along the contour line to its intersection with the western boundary of section 14 immediately south of an unnamed unimproved road, T22N, R14W (Iron Peak Quadrangle); then

(9) Proceed straight north along the section line to the southeast corner of section 3, T22N, R14W (Iron Peak Quadrangle); then

(10) Proceed straight west along the section line to the southwest corner of section 3, T22N, R14W (Iron Peak Quadrangle); then

(11) Proceed straight north along the section line to the northwest corner of section 3, T22N, R14W (Iron Peak Quadrangle); then

(12) Proceed straight east along the section line, crossing the Eel River, to the northeast corner of section 2, which coincides with the Round Valley Indian Reservation's southern boundary, T22N, R14W (Iron Peak Quadrangle); then

(13) Proceed straight south along the section line to the southeast corner of section 2, T22N, R14W (Iron Peak Quadrangle); then

(14) Proceed 0.3 mile straight east to the section line's intersection with the 2,000-foot elevation line along the northern boundary of section 12, T22N, R14W, west of Eberle Ridge, (Iron Peak Quadrangle); and

(15) Proceed generally southeast along the meandering 2,000-foot elevation, crossing onto the Covelo West map and continuing southerly along the 2,000-foot contour line from Stoner Creek in section 18, T22N, R13W, and, returning to the Dos Rios map, continue southeasterly along the 2,000-foot contour line (crossing Goforth and Poonkinny Creeks), to the beginning point at the contour line's intersection with Poonkinny Road.

Signed: August 15, 2005.

Vicky I. McDowell,

Acting Administrator.

Approved: September 2, 2005.

Timothy E. Skud,

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

[FR Doc. 05–20546 Filed 10–13–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–35; Re: ATF Notices Nos. 960 and 966; TTB Notice Nos. 6 and 31]

RIN 1513–AA39

Establishment of the Red Hill Douglas County, OR Viticultural Area (2001R–88P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the 5,500-acre Red Hill Douglas County, Oregon viticultural area. It is totally within the Umpqua Valley viticultural area in Douglas County, Oregon. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

EFFECTIVE DATE: November 14, 2005.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, California 94952; telephone (415) 271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;

- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Red Hill Petition and Rulemakings

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF), the predecessor agency to the Alcohol and Tobacco Tax and Trade Bureau (TTB), received a petition from Mr. Wayne Hitchings, a vineyard owner in the Red Hill area of Douglas County, Oregon, to establish the "Red Hill" viticultural area.

The proposed 5,500-acre area is entirely within the Umpqua Valley viticultural area (27 CFR 9.89) and near the small town of Yoncalla, in northeastern Douglas County, Oregon. At the time of the petition, approximately 194 acres were devoted to the cultivation of wine grapes, with the majority planted to pinot noir.

Notices of Proposed Rulemaking and Comments Received

Three notices were published regarding the establishment of the proposed viticultural area with the name "Red Hill (Oregon)," and one notice was published that proposed establishing the viticultural area with the name "Red Hill Douglas County, Oregon." The multiple notices stemmed from requests for commenting-time extensions, based on opposition to the "Red Hill (Oregon)" proposed name and other concerns.

ATF Notice No. 960

ATF published the first notice of proposed rulemaking regarding the establishment of the Red Hill (Oregon) viticultural area in the **Federal Register** (67 FR 66079) as Notice No. 960 on October 30, 2002. Prior to the publication of Notice No. 960, which requested public comments on the proposed viticultural area, ATF decided to include the geographical modifier "Oregon" with the "Red Hill" name, making the proposed name "Red Hill (Oregon)." Notice No. 960 explained that both the "Red Hill" name and the Oregon-modified name were subject to public comment.

Below, we summarize the evidence presented in the petition and outlined in Notice No. 960.

1. Name Evidence.

The Red Hill name has been used in Douglas County, Oregon, for more than 150 years. The name "Red Hill" derives from the color of the soil exclusive to this area of Douglas County.

The USGS Drain, Oregon, map labels Red Hill in sections 35, 26, and 23, T23S/R5W. The map also identifies the light duty Red Hill Road that meanders through the region. Interstate 5 signage, at exit 150 in northern Douglas County, Oregon, includes the "Red Hill" name and directs travelers to the area. The USGS Geographic Names Information System identifies Red Hill as an area in Douglas County, Oregon. Douglas County is located in southwest Oregon, as noted on the Oregon-Washington American Automobile Association State Series map, published February 2003, and on page 92, "Oregon," of the American Map 2002 Road Atlas.

Historically, the Applegate and Scott families settled at the foot of Red Hill in the mid-19th century. By 1879, settlers established a school district in the Red Hill area and built a schoolhouse on Red Hill Road (identified in the southeast corner of the USGS Drain, Oregon, map in section 26, T23S/R5W). The school district operated until 1943; the Red Hill School now stands abandoned. "Douglas County Schools, A History Outline," by Larry Moulton, October 2000, includes a hand-drawn map and directions to the "Red Hill School Site."

2. Boundary Evidence.

Red Hill parallels and lies to the east of the Interstate 5 highway for approximately 8.5 miles. The hill is readily seen as a dominant geological structure at the Red Hill exit, number 150, on Interstate 5. The hill runs in a north-south direction, with predominantly westward sloping.

The boundaries are based on the hillside elevations and the preferred viticultural site on the southwest slope. The low elevation is the 800-foot contour line, and the average high elevation is 1,200 feet, the maximum altitude for quality grape production in the area. Areas below the 800-foot elevation become valley terrain consistent with the distinctive features of the Umpqua Valley viticultural area. Red Hill areas above the 1,200-foot elevation and on the east side are generally owned by a large timber concern and are dedicated to re-foresting efforts.

The dominant Jory series soils in the proposed viticultural area are mostly deep and well drained to the 15-foot depth. These soils are volcanic in origin and are formed in residuum. Jory soils are exclusive to the area of Douglas County that lies within the proposed viticultural area boundaries, but are also found at the higher, adjacent elevations, where climate conditions are not suitable for viticulture.

3. Distinguishing Features.

a. Geology.

Red Hill is geologically part of the Umpqua Formation, with numerous rising domes that present an undulating appearance. The landform is composed of basalts similar to the volcanic rocks on the Pacific Ocean floor.

b. Soil.

The Jory series, which predominates the area, includes the deepest soils and forms a uniform reservoir of texture and depth across the proposed viticultural area. Jory soil is found at 1,900 feet to the north and 1,900 feet to the west of the southwest corner of section 34, T23S and R5W. A soil analysis of the Jory soil in this area segregates it into six sections when taken to a depth of 60 inches. The first two sections (0 to 8 inches and 8 to 16 inches) are moderately acidic, silty clay loam of a reddish brown color. The third through the sixth sections (16 to 24 inches, 24 to 33 inches, 33 to 48 inches, and 48 to 60 inches, respectively) are all strongly acidic. The third section is dark reddish brown in color, and the fourth through sixth sections are dark red. Bedrock is found at 60 inches or deeper.

Mr. Jerry Maul, a former Douglas County extension agent, wrote in a letter dated March 2, 2001, about the appellation status of the Red Hill region of Douglas County. He stated that Jory soils found at Red Hill and in other regions of Oregon are accepted as the premier soils in the production of wine grapes. To some extent, these soils can be found to the north at Dundee Hills, Oregon, and in the foothills west of Corvallis, Oregon.

Mr. Walt Barton, an engineering technician for the Douglas Soil and Water Conservation District, stated in his March 7, 2001, letter, "this soil [Jory series] in Douglas County is unique to the Red Hill District. * * * In contrast, the soils in the surrounding area [Umpqua Valley] are shallow or poorly drained and are formed from sedimentary rock." He also stated that the Jory series is deep, well drained, and derived from bedrock.

Appearing less often on Red Hill, and mixed within the Jory series, are the Nekia, Philomath, and Dixonville series. Like the Jory, these series are formed in residual soil material from weathered basalt and possess similar reddish soil

color and drainage characteristics. The noticeable difference is found in the depth of the soils, with the Jory at 5 to 15 feet in depth and the other series between 3 and 8 feet deep. These well-drained soils change in structure and depth below the 800-foot elevation line, delineating Red Hill on the western and southern flanks, with sedimentary rocks at the base.

c. Climate.

The Umpqua Valley and Douglas County regional climate is largely affected by the Pacific Ocean's coastal weather systems 50 miles to the west. These storm systems are buffered by the Callahans, a group of mountains running north and south in the Coast Range. The result is a moderate winter climate in the proposed viticultural area. During the summers, numerous Pacific highs replace the winter storm patterns with warm, dry weather. These climate changes typically occur in May and November.

Temperatures throughout the larger Umpqua Valley viticultural area differ greatly, creating numerous microclimates. In the Red Hill area, a portion of the Umpqua Valley viticultural area, daytime growing temperatures are moderated by elevation and surrounding terrain, in comparison to lower valley elevations that experience warmer daytime temperatures as high as 105 °F. Red Hill's average daytime temperature during the growing season is 75 °F. Temperature recordings at Oakland, Sutherlin, and Roseburg, all located along Interstate 5 in Douglas County, can increase as much as 11 °F from Red Hill daytime temperatures. Nighttime Red Hill temperatures are typically 7 °F lower than those in the surrounding areas during the summer months.

Growing season temperature data, collected between 1998 and 2000, came from the areas of Red Hill and from the Roseburg Regional Airport, which is located 20 miles south of Red Hill. During this 3-year collection period, the average high was 74.5 °F for Roseburg and 72.3 °F for Red Hill. The average low was 50 °F for Roseburg and 46.4 °F for Red Hill.

The Red Hill microclimate is one of a large number of different climates within a relatively short distance. The climate changes are primarily caused by associated landforms and elevation differences. Within the elevation range of the proposed viticultural area, the geographical landform provides cold air drainage that maintains frost-free grape-growing seasons. The nearby vineyards on the valley floor, without the benefit of the vertical cold air drainage, have frequent frosts.

The Red Hill microclimate also includes occasional fog in winter and summer. The fog can be extreme, completely covering the valley's floor, while Red Hill enjoys full sun. This fog condition can also reverse itself, with Red Hill being totally blanketed in fog, while the valley floor enjoys fog-free visibility.

Elevations of the proposed viticultural area are generally at or above 800 feet, with most of the terrain below 1,200 feet. This span of elevations has a significant effect on growing conditions. The hillside climate allows grapes to mature at a slower rate, producing small clusters of grapes with high acids and intense flavors.

In his March 2, 2001, letter, Jerry Maul explained that the Red Hill bloom and ripening dates may be 12 days later than the rest of the Umpqua Valley viticultural area and 4 to 7 days ahead of those of comparable varieties in the Willamette Valley viticultural area. Mr. Maul also stated that the Willamette Valley viticultural area has 10 inches more annual rain than the proposed viticultural area.

Average rainfall in the Red Hill area is 51 inches at the 1,000-foot elevation, which contrasts with 40 inches at the 600-foot elevation of the Umpqua Valley floor. Other areas close to Red Hill all have significantly less rainfall, as noted in the table below.

Location name (Oregon)	Average annual rainfall (inches)
Red Hill Road	51.53
Oakland	40.86
Drain	45.70
Sutherlin	41.81
Roseburg	32.44
Winchester	34.99

Notice No. 960 requested public comments by December 30, 2002, and ATF received nine comments, one in support, seven in opposition, and one that requested an extension of the comment period. The one supporting commenter stated that the proposed viticultural area is geologically and climatically distinct from surrounding areas.

All seven opposing commenters expressed concern about the proposed "Red Hill (Oregon)" name. They cited consumer confusion with other Red Hill wine regions in Oregon, California, New Zealand, and Australia. Several commenters who use the geographical term "Red Hills of Dundee" on wine labels believed the petitioner would be capitalizing on that established and recognized name. A commenter holding the "Red Hill Vineyard" trademark in California stated concerns about potential brand name confusion.

The "Red Hill" name, according to a commenter, is "common" and "generic." Also, the "Oregon" modifier is too expansive and encompassing, the commenter continued, and suggested Douglas County or Umpqua as modifiers. The name "Red Hill" in Douglas County is not well known locally or nationally, according to several opposing commenters. One commenter questioned if the proposed Red Hill (Oregon) area is located in the Willamette Valley, in northwest Oregon, to the north of Douglas County.

The Red Hill area in Douglas County, according to several commenters, has no history of grape-growing or established viticulture reputation. They also stated that climate, soil, and topography are not distinguishable from the Red Hills of Dundee, located in the Willamette Valley in northwest Oregon. Another commenter stated there is red soil "all over the planet."

A commenter cited lack of justification in selecting the elevation range of 800 to 1,200 feet. Another commenter noted the entire Red Hill landform is not within the proposed boundary, and that the proposed viticultural area should be renamed to reflect the portion of Red Hill within the proposed boundary. The commenter suggested the name "Pollack Creek," which is the name of an estuary running through the proposed area.

One commenter requested a 60-day extension to the comment period for more time to study the petition and prepare a comment.

ATF Notice No. 966

In response to the commenter's request for an extension of the comment period prescribed in Notice No. 960, ATF on January 16, 2003, published in the **Federal Register** (68 FR 2262) a second notice, No. 966, regarding the proposed establishment of the Red Hill (Oregon) viticultural area. Notice No. 966 re-opened the comment period and requested public comments by March 17, 2003. ATF received 16 comments, with 12 in support, 2 in opposition, 1 that suggested a name change, and 1 that requested an extension of the comment period.

The 12 supporting commenters, with the majority living and growing grapes in Douglas County, Oregon, stated their belief that the Red Hill region is distinct from the surrounding areas in soil, rainfall, and temperatures. Also, they stated that the geology and higher elevations on the hillsides are unique to the surrounding lower elevations.

According to one supporting commenter, the Red Hill terrain above the 1,200-foot elevation line and on the east side of the hill, located outside the proposed boundary line, is not conducive to successful viticulture. A supporting Corvallis, Oregon, vineyard owner stated that east-facing slopes make poor vineyard sites.

An Oakland, Oregon, supporting commenter stated that the proposed viticultural area has cool night temperatures, as compared to areas outside the proposed boundary, and enjoys a frost-free growing season. The same commenter noted that the reddish Jory soils are isolated on Red Hill from the surrounding region.

A supporting Medford, Oregon, horticultural advisor commented that the reddish soil is composed of silt-sized volcanic ash deposited by wind on the hilltops, not in the valleys. The commenter also stated that the marine influence provides a cooler and wetter climate, as compared to the surrounding Umpqua Valley area. The horticultural advisor stated his belief that the Red Hill area is unique to the region and deserves its own appellation.

A supporting Douglas County extension agent commented that the majority of the County grapes grow between 400 and 800 feet in elevation and that the elevation level of between approximately 800 and 1,200 feet of the proposed Red Hill viticultural area is the maximum elevation for successful ripening of grapes in the Umpqua climatic zone. The extension agent explained that increased winter and spring rainfall levels in the Red Hill region contrast to the rainfall of the adjacent lower elevation valley vineyard sites and that Red Hill has a very distinctive Jory soil type.

A supporting general manager of the Douglas County Farmers Co-op commented that unique characteristics of Red Hill include the soils, microclimate, and rainfall. The general manager also states that viticulture occurs at higher elevations than those of most other Douglas County grape-growing locations.

According to several supporting commenters, the Red Hill name is appropriate and has historical significance. The "Red Hill" sign at exit 150 of Interstate 5 in Oregon, according to one commenter, is the only "Red Hill" designation in that region of the Interstate system. Another commenter found humor in the idea of public confusion among the "Red Hill," "Red Hills of California," or the "Red Hills of Dundee" geographical names. The Douglas County extension agent confirmed the historical significance of the "Red Hill" name for the area.

The two opposing commenters stated their concern about the proposed "Red Hill (Oregon)" name. They cited consumer confusion with the Red Hills of Dundee grape-growing region in the Willamette Valley viticultural area of northwest Oregon. A commenter explained that the grapes from the proposed viticultural area lack "Red Hill" marketplace recognition. The same commenter stated his belief that the petition information refers to new plantings that have not been commercially harvested. In conjunction, the commenter questioned the distinguishing climatic features evidence of the petition, as related to the viticultural bloom and ripening dates. The other commenter contended that there is inadequate historical viticultural evidence to support the contention that the area produces unique wines. Also, the commenter stated that no current demand for wines from the Red Hill area of Douglas County, Oregon, exists.

One commenter suggested "Red Hill of Oregon" as an alternate name to the "Red Hill (Oregon)" proposed name.

One commenter requested an additional comment period of 60 days to allow time for receipt and evaluation of a copy of the original petition.

TTB Notice No. 6

In response to the commenter's request for an extension of the comment period prescribed in Notice No. 966, TTB, as the successor agency to ATF, on April 24, 2003, published in the **Federal Register** (68 FR 20090) Notice No. 6. This third notice re-opened the comment period regarding the proposed establishment of the Red Hill (Oregon) viticultural area. Notice No. 6 requested public comments by May 27, 2003. TTB received nine comments, three in support, one in opposition, and five that requested a public hearing.

The three comments in support of the proposed Red Hill (Oregon) viticultural area focused on the unique climate conditions for viticulture. The owner of an Oakland, Oregon, vineyard, located about 10 miles south of Red Hill, commented that Red Hill is distinct from other growing areas in the Umpqua Valley viticulture area. The distinctive combination of soil, temperature, and rainfall pattern, the commenter continues, is not repeated elsewhere in the Umpqua Valley. Another Oakland vineyard owner concurred that the Red Hill area is a unique viticultural area. The managing partner of an Elkton, Oregon, vineyard, located to the west-northwest of Red Hill, commented, "I have been to this vineyard a number of times and the soils, elevation, rainfall and climate differentiate this site from all others in the Umpqua [Valley] AVA."

In addition, one supporting commenter explained that early settlers started using the "Red Hill" name and that the petitioner did not coin the "Red Hill" name for the purpose of petitioning for the establishment of a viticultural area.

The one opposing commenter of the proposed Red Hill (Oregon) viticultural area discussed possible trade and consumer confusion related to the proposed name of the viticultural area. Two Oregon trademarks in use since 1970, "Red Hills Estate" and "Red Hills Vineyard," are held by a Willamette Valley, Oregon, winery. The commenter believes consumer confusion between the two trademark names and the proposed Red Hill (Oregon) viticultural area names will occur. The commenter suggested "Pollack Creek" as an alternate viticultural area name.

The five commenters who requested a public hearing wished to debate the establishment of the proposed Red Hill (Oregon) viticultural area. Specific reasons included a belief that the name Red Hill (Oregon) is not locally or nationally recognized and a concern that the proposed name could be confused with the Red Hills of Dundee grape-growing region in the Willamette Valley of northwest Oregon. Also, the commenters contended that the proposed area lacks viticultural history.

TTB Notice No. 31

Based on the comments opposed to the proposed "Red Hill (Oregon)" name, TTB decided to solicit comments on "Red Hill Douglas County, Oregon" as a new name for the proposed viticultural area. Accordingly, on February 2, 2005, TTB published in the **Federal Register** (70 FR 5397) Notice No. 31, which included a revised boundary description in the proposed regulatory text and re-opened the period for public comments through March 4, 2005. TTB revised the boundary description to provide more detail for ease in determining the proposed lines on the USGS maps. TTB received no comments in response to this notice.

Discussion of Comments

As indicated above, ATF and TTB received a total of 34 public comments in response to the three proposed Red Hill (Oregon) notices and none in response to the notice proposing the "Red Hill Douglas County, Oregon" name. Opposing commenters supported their positions by addressing a number

of points, which we summarize and respond to below.

• Lack of name recognition, specifically, that the name Red Hill (Oregon) is not locally or nationally recognized.

TTB disagrees with this contention. As noted in Notice No. 960, the Red Hill name, based on reddish soils, has been used in Douglas County, Oregon, for over 150 years. Today, use of the name "Red Hill" continues to identify the Red Hill landform and farmlands in the area and is used on the Interstate 5 exit sign number 150. The USGS Drain, Oregon, map includes in section 26, T23S/R5W, a number of references to place and road names that include the words "Red Hill."

• Name confusion (with other areas, brands, and trademarks). Many commenters expressed concern that the name is easily confused with other names, such as the Red Hills (plural) area of Willamette Valley, Red Hills of Dundee (Oregon), Red Hills (New Zealand), Red Hills Estate (Oregon trademark), Red Hills Vineyard (Oregon trademark), and Red Hill Vineyard (California trademark).

TTB agrees that establishing a viticultural area named Red Hill (Oregon) could create potential conflicts and/or confusion with other geographical area, brand, and trademark names used by wine industry members. As stated in Notice No. 31, TTB determined that the proposed "Red Hill Douglas County, Oregon" name adequately describes and geographically identifies the proposed viticultural area and does not create confusion with other geographical areas or create conflict with other wine industry brand or trademark names currently in use.

• Insufficient boundary evidence. Several opposing commenters stated the boundaries do not reflect the geographical area known as Red Hill in Douglas County, Oregon.

TTB notes that the petition and Notice No. 960 both detail the rationale for the boundary line determination. Although portions of the Red Hill geographical formation are outside the boundaries, the area conducive to successful viticulture, based on soil and climate evidence, is included.

After careful consideration, TTB has determined that the proposed Red Hill Douglas County, Oregon viticultural area boundary lines are appropriate and accurate.

• Lack of justification in selecting the elevation range of 800 to 1,200 feet.

Several commenters questioned the use of the approximate 800- to 1,200-foot elevation lines for the proposed boundaries.

TTB believes the specified elevation is correct. One factor that supports the upper range of elevation, as presented by the petitioner and confirmed in public comments, is the timber industry's extensive land ownership on Red Hill. Much of the land at the higher elevations, above about 1,200 feet in elevation and to the east side of the hill, beyond the proposed boundaries, is dedicated to reforesting. The Douglas County extension agent Steve Renquist explained that the proposed upper boundary, at the 1,200-foot contour line, is the maximum elevation for successful grape-ripening in the region.

TTB, therefore, considers the 800- to 1,200-foot elevation band to be a defining feature of this proposed viticultural area.

• Insufficient distinguishing features, for example, climate (especially relating to the viticultural bloom and ripening dates), soil, and topography.

The petition stated that the area's growing season temperatures, including those of spring and fall, are warmer during the day and cooler at night, which contrasts to the surrounding Umpqua region. According to a former Douglas County extension agent, Red Hill bloom and ripening dates vary from the rest of the Umpqua Valley viticultural area and those of comparable varieties in the Willamette Valley viticultural area.

The petition also stated that, according to horticultural advisor Brian Wolf, the Red Hill climate enjoys a marine influence, generally cooler and wetter, than the surrounding areas. Also, it contrasts to the Willamette Valley to the north, which has more rainfall and cooler temperatures than Red Hill. From a climatic perspective, including growing temperatures and solar radiation, commenters explain that the Red Hill area's east-facing slopes and elevations above 1,200 feet are not conducive to successful viticulture, and, thus, are outside the boundaries of the proposed viticultural area. Moreover, the proposed Red Hill Douglas County, Oregon viticultural area experiences distinctive rainfall and temperature patterns, a relatively frost-free growing season, a west-facing orientation and its related solar exposure, and a marine influence, as commenters describe. The commenters opposed to the proposed viticultural area provided no specific data to refute the information provided in the petition in this regard.

Regarding the reddish soil of this proposed viticultural area, horticultural advisor Brian Wolf also stated, according to the petition, that it is not clay, but silt-sized volcanic ash deposited by wind. This red volcanic ash exists only on the tops of hills, not at the lower elevation valleys, and has extraordinary water-holding capability that facilitates viticulture. In addition, a vineyard owner 4 miles south of Red Hill describes his soil as poorly draining silt clay mudstone, which contrasts to the deep, red, well-drained soil in the proposed viticultural area. Finally, the letter from engineering technician Walt Barton that was submitted with the petition stated that, within Douglas County, the red Jory series is unique to the Red Hill area. Areas surrounding the Red Hill region, Mr. Barton explained, have contrasting shallow or poorly drained soils of sedimentary origin, unlike the Red Hill Jory series soils that are well drained and derive from bedrock.

TTB believes that these statements support the conclusion that the red Jory soils of the Red Hill area are a unique and distinguishing factor in that area of the Umpqua Valley and Douglas County, Oregon. The fact that there is red soil "all over the planet," as claimed by one opposing commenter, does not deny the significance of the soil found in the proposed viticultural area.

As regards topography, the petition pointed out that the hillside climate allows grapes to mature at a slower rate, producing small clusters of grapes with high acids and intense flavors. Therefore, the hillside elevations of the proposed viticultural area are distinctive. The proposed boundaries are generally limited by the 1,200-foot upper elevation and by the east-facing hillside slopes where viticulture tends to be less successful. Also, below the 800-foot proposed elevation boundary line, the area trends to the Umpqua Valley growing environment. The opposing commenters provided no specific information to refute these statements.

• Lack of grape-growing history and established viticulture reputation.

Several opposing commenters voiced concern about the lack of viticultural history of the Red Hill area in Douglas County, Oregon, and a lack of commercial grape harvesting. They stated that the area does not have a proven record of producing unique wines. Another commenter stated that there is little commercial demand for wines originating from this area.

TTB notes that the regulations pertaining to the establishment of viticultural areas do not require the existence of a substantial viticultural history, a production of unique wines, or a demand for wines originating in the proposed viticultural area. Therefore, in evaluating a petition, TTB does not consider as determining factors the

questions of whether the viticulture of the proposed area is new or established, whether the area is producing unique wines, or whether wine from the area is in demand in the marketplace.

• Need for public hearings.

Five opposing commenters requested a public hearing to openly discuss the petition and present oral arguments.

However, TTB determined that the written comments received in response to Notice Nos. 960, 966, and 6, together with the information submitted with the petition, provided adequate information, evidence, and documentation on which to base a decision.

TTB Finding

After careful review of the petition and the public comments, TTB believes that the evidence submitted with the petition supports the establishment of the proposed viticultural area under the name proposed in Notice No. 31. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the "Red Hill Douglas County, Oregon" viticultural area in Douglas County, Oregon, effective 30 days from this document's publication date.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, "Red Hill Douglas County, Oregon" is recognized as a name of viticultural significance. Consequently, wine bottlers using "Red Hill Douglas County, Oregon" in a brand name, including a trademark, or in another label reference as to the origin of the wine, must ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

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

Executive Order 12866

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

Drafting Information

Nancy Sutton, Regulations and Procedures Division, drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter 1, part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

■ 2. Amend subpart C by adding § 9.190 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.190 Red Hill Douglas County, Oregon.

(a) *Name.* The name of the viticultural area described in this section is "Red Hill Douglas County, Oregon". For purposes of part 4 of this chapter, "Red Hill Douglas County, Oregon" is a term of viticultural significance.

(b) *Approved Maps.* The appropriate maps for determining the boundary of the Red Hill Douglas County, Oregon viticultural area are three United States Geological Survey (USGS), 1:24,000 scale, topographic maps. They are:

(1) Sutherlin, OR (Provisional edition 1988);

(2) Scotts Valley, OR (Provisional edition 1987); and

(3) Yoncalla, OR (Provisional edition 1987).

(c) *Boundary.* The Red Hill Douglas County, Oregon viticultural area is located in Douglas County, Oregon, east of Interstate 5 near the hamlet of Rice Hill, between the villages of Yoncalla and Oakland.

(1) Beginning on the Yoncalla map along the southern boundary of section 35, T23S/R5W, at the point where a pipeline crosses the T23S/T24S township line, proceed due west 0.8 mile along the T23S/T24S township line to its intersection with the 800-foot contour line just west of Pollock Creek in section 34, T23S/R5W (Yoncalla Quadrangle); then

(2) Proceed southerly along the meandering 800-foot contour line, cross onto the Sutherlin map in section 10, T24S/R5W, and continue westerly along the 800-foot contour line to its first intersection with the eastern boundary of section 8, T24S/R5W (Sutherlin Quadrangle); then

(3) Proceed northerly along the meandering 800-foot contour line, return to the Yoncalla map in section 9, T23S/R5W, and continue northerly along the 800-foot contour line to its intersection with the T23S/T24S township line very near the northwest corner of section 4, T24S/R5W (Yoncalla Quadrangle); then

(4) Proceed northeasterly along the 800-foot contour line, cross Wilson Creek in the northern portion of section 23, T23S/R5W, pass onto the Scotts Valley map at Section 14, T23S/R5W, and continue northeasterly along the 800-foot contour line to its intersection with the R4W/R5W range line, which at that point is also the eastern boundary of section 1, T23S/R5W (Scotts Valley Quadrangle); then

(5) Proceed southwesterly along the 800-foot contour line, re-cross the R4W/R5W range line, and continue to the second intersection of the 800-foot contour line and the pipeline in section 1, T23/R5W (Scotts Valley Quadrangle); then

(6) Proceed 5.75 miles southwesterly along the pipeline, cross Wilson Creek in section 24, T23S/R5W, return to the Yoncalla map in section 26, T23S/R5W,

and continue southwesterly along the pipeline to the point of beginning at the intersection of the pipeline intersection and the T23S/T24S township line in section 35, T23S/R5W (Yoncalla Quadrangle).

Signed: July 22, 2005.

John J. Manfreda,

Administrator.

Approved: September 2, 2005.

Timothy E. Skud,

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

[FR Doc. 05–20551 Filed 10–13–05; 8:45 am]

BILLING CODE 4810–31–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in November 2005. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective November 1, 2005.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) a set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during November 2005, (2)adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during November 2005, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during November 2005.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 3.70 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent an increase (from those in effect for October 2005) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for October 2005) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during November 2005, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 145, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *		*	*	*	*	*	*	
145	11–1–05	12–1–05	2.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 145, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *		*	*	*	*	*	*	
145	11–1–05	12–1–05	2.50	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for November 2005, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*		*
November 2005	.0370	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 7th day of October 2005.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 05–20581 Filed 10–13–05; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 29

RIN 1505–AB55

Federal Benefit Payments Under Certain District of Columbia Retirement Plans

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is issuing final regulations to amend its DC Pensions rules promulgated pursuant to Title XI of the Balanced Budget Act of 1997, as amended, which was effective on October 1, 1997. The Act assigns to the Secretary of the Treasury responsibility for payment of benefits based on service accrued as of June 30, 1997, under the retirement plans for District of Columbia teachers and police officers and firefighters, and payment of past and future benefits under the retirement plan for District of Columbia judges. The amended regulations implement the provisions of the Act that provide the Secretary with the responsibility to ensure the accuracy of payments made to annuitants before the effective date of the Act.

DATES: This final rule is effective October 14, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Cuffe, Office of the General Counsel, MT Room 2209A, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202–622–1682, not a toll-free call).

SUPPLEMENTARY INFORMATION: On April 13, 2005, the Department of the Treasury published (at 70 FR 19366) proposed regulations to amend the regulations in Part 29 that implement Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, 756–759, as amended (the Act). The Act transferred certain pension liabilities from the District of Columbia Government to the Federal Government. The Act requires that the Secretary of the Treasury (the Secretary) pay certain benefits under the retirement plans for District of Columbia teachers (Teachers Plan) and police officers and firefighters (Police and Firefighters Plan) based on service accrued on or before June 30, 1997, and benefits under the retirement plan for District of Columbia judges (Judges Plan) regardless of when service accrued. On December 23, 2004, the District of Columbia Retirement Protection Improvement Act of 2004, Public Law 108–489, 118 Stat. 3966 (the 2004 Act) was enacted. The 2004 Act amended the Act, in part, to create a new fund from the two funds that had financed the Teachers Plan and the Police and Firefighters Plan and to provide the Judges Plan with procedures for resolving denied benefit claims.

The Act provides the Secretary with authority to ensure the accuracy of Federal Benefit Payments made before October 1, 1997, under the Police and Firefighters Plan and the Teachers Plan. Section 11012 of the Act requires the

Secretary to make benefit payments under the Police and Firefighters Plan and Teachers Plan based on service accrued on or before June 30, 1997. An annuitant's entitlement to the correct payment amount based on that service, but not more than that amount, does not expire. Thus, the Secretary's authority to review and ensure the accuracy of all payments based on service accrued on or before June 30, 1997, extends to all such payments whether made before or after the October 1, 1997, effective date of the Act.

In the case of the Judges Plan, section 11251(a) of the Act (codified at DC Official Code section 11–1570(c)(2)(A)) vests in the Secretary authority over Federal Benefit Payments made under the Judges Plan before the October 1, 1997, effective date of the Act. Accordingly, the Secretary has authority to ensure the accuracy of payments made before October 1, 1997, under the Judges Plan, the Police and Firefighters Plan, and the Teachers Plan.

The amendments to Part 29 reflect the authority of the Secretary as provided in the sections of the Act discussed above and the manner in which that authority is being administered by the Treasury Department.

The 2004 Act amended the Act to create the District of Columbia Teachers, Police Officers, and Firefighters Federal Pension Fund with the assets transferred from the District of Columbia Federal Pension Liability Trust Fund and the Federal Supplemental District of Columbia Pension Fund, which funds were terminated. The 2004 Act also amended the Act to provide the Judges Plan with procedures for resolving denied benefit claims.

The Secretary has the authority under section 11083 and paragraph 11251(b) (codified as DC Official Code section 11–1572(a)) of the Act "to issue regulations to implement, interpret, administer and carry out the purposes of this [Act], and, in the Secretary's discretion, those regulations may have retroactive effect." The original regulations by their terms apply only to Federal Benefit Payments made on or after October 1, 1997, the effective date of the Act. See 31 CFR 29.101(c). Therefore, the Department of the Treasury amends the original regulations to implement the Secretary's authority under the Act to ensure the accuracy of payments made to annuitants prior to the October 1, 1997, effective date of the Act. The Department also amends the original regulations to reflect the changes made in the 2004 Act and to make several technical changes as specified below.

Comments on the proposed rule were requested by June 13, 2005. The Department received two comments in support of the proposed regulations. Therefore, the proposed regulations are being adopted without change as final regulations.

Administrative Procedure Act

Because the amendments contained in this final rule are mandated by the 2004 Act, have retroactive effect pursuant to section 11083 or 11251(b) of the Act, or are technical changes, it has been determined, pursuant to 5 U.S.C. 553(d)(3) that a delayed effective date is unnecessary.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The rule only affects the determination of the Federal portion of retirement benefits to certain former employees of the District of Columbia. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 29

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Intergovernmental relations, Law enforcement officers, Pensions, Retirement, Teachers.

■ Accordingly, the Department of the Treasury is amending title 31, part 29, Code of Federal Regulations, to read as follows:

PART 29—FEDERAL BENEFIT PAYMENTS UNDER CERTAIN DISTRICT OF COLUMBIA RETIREMENT PROGRAMS

■ 1. The authority citation for Part 29 is revised to read as follows:

Authority: Subtitle A, Subchapter B of Chapter 4 of Subtitle C, and Chapter 3 of Subtitle H, of Pub. L. 105–33, 111 Stat. 712–731, 756–759, and 786–787; as amended.

■ 2. In § 29.101, paragraphs (a) and (c) are revised, and paragraph (e) is added, to read as follows:

§ 29.101 Purpose and scope.

(a) This part contains the Department's regulations implementing Subtitle A, Subchapter B of Chapter 4 of Subtitle C, and Chapter 3 of Subtitle H, of Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, 756–759, enacted August 5, 1997, as amended.

* * * * *

(c) This part applies to Federal Benefit Payments.

* * * * *

(e) This part does not apply to the District of Columbia replacement plan, which covers payments based on service accrued after June 30, 1997, pursuant to section 11042 of the Act.

■ 3. In § 29.103, definitions for *Act*, *Benefits Administrator*, *Federal Benefit Payment*, and *Retirement Funds* in paragraph (a) are revised to read as follows:

§ 29.103 Definitions.

(a) In this part—

Act means Subtitle A, Subchapter B of Chapter 4 of Subtitle C, and Chapter 3 of Subtitle H, of Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, 756–759, as amended.

Benefits Administrator means:

(1) For the Teachers Plan and the Police and Firefighters Plan under section 11041(a) of the Act:

(i) During the interim benefits administration period, the District of Columbia government; or

(ii) After the end of the interim benefits administration period:

(A) The Trustee selected by the Department under sections 11035(a) or 11085(a) of the Act;

(B) The Department, if a determination is made under sections 11035(d) or 11085(d) of the Act that, in the interest of economy and efficiency, the function of the Trustee shall be performed by the Department rather than the Trustee; or

(C) Any other agent of the Department designated to make initial benefit determinations and/or to recover or recoup or waive recovery or recoupment of overpayments of Federal Benefit Payments, or to recover or recoup debts owed to the Federal Government by annuitants; or

(2) For the Judges Plan under section 11252(b) of the Act:

(i) During the interim benefits administration period, the District of Columbia government; or

(ii) After the end of the interim benefits administration period for the Judges Plan:

(A) The Trustee selected by the Department under section 11251(a) of the Act;

(B) The Department, if a determination is made under section

11251(a) of the Act that, in the interest of economy and efficiency, the function of the Trustee shall be performed by the Department rather than the Trustee; or

(C) Any other agent of the Department designated to make initial benefit determinations and/or to recover or recoup or waive recovery or recoupment of overpayments of Federal Benefit Payments, or to recover or recoup debts owed to the Federal Government by annuitants.

* * * * *

Federal Benefit Payment means a payment for which the Department is responsible under the Act, to which an individual is entitled under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan, in such amount and under such terms and conditions as may apply under such plans, including payments made under these plans before, on, or after the October 1, 1997, effective date of the Act. Service after June 30, 1997, shall not be credited for purposes of determining the amount of any Federal Benefit Payment under the Teachers Plan and the Police and Firefighters Plan.

* * * * *

Retirement Funds means the District of Columbia Teachers, Police Officers, and Firefighters Federal Pension Fund established under section 11081 of the Act, the District of Columbia Judicial Retirement and Survivors Annuity Fund established under section 11252 of the Act, and their predecessor funds.

* * * * *

■ 4. Section 29.201 is revised to read as follows:

§ 29.201 Purpose and scope.

This subpart contains information concerning the relationship between the Department and the District government in the administration of the Act and the functions of each in the administration of that Act.

■ 5. In § 29.401, paragraphs (a)(2) and (3) are revised, and paragraph (c) is added, to read as follows:

§ 29.401 Purpose.

(a) * * *

(2) The procedures for determining an individual's eligibility for a Federal Benefit Payment and the amount and form of an individual's Federal Benefit Payment as required by sections 11021 and 11251(a) (codified at DC Official Code section 11–1570(c)(2)(a)) of the Act;

(3) The appeal rights available under section 11022(a) of the Act and section 3 of the 2004 Act (codified at DC Official Code section 11–1570(c)(3)) to claimants whose claim for Federal Benefit Payments is denied in whole or in part; and

* * * * *

(c) This part does not apply to claims and appeals filed before October 1, 1997. Such claims must be pursued with the District of Columbia.

§ 29.402 [Amended]

■ 6. In § 29.402, the definitions for *Act* and *Benefits Administrator* are removed.

■ 7. In § 29.501, paragraph (e) is added to read as follows:

§ 29.501 Purpose; incorporation by reference; scope.

* * * * *

(e) This part does not apply to debt collection claims asserted and requests for waivers of collection initiated before October 1, 1997. Such debt collection claims must be pursued by the District of Columbia and such requests for waivers of collection must be pursued with the District of Columbia.

Dated: October 6, 2005.

Rochelle F. Granat,

Director, Office of DC Pensions.

[FR Doc. 05–20610 Filed 10–13–05; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 05–012]

RIN 1625–AA87

Security Zones; Port Valdez and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is continuing temporary security zones encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and Valdez Narrows, Port Valdez, Alaska, and is reducing the size of one of these zones. These temporary security zones will remain effective until January 12, 2006, while we complete a separate rulemaking to create permanent security zones in these locations.

DATES: This rule is effective from October 11, 2005, through January 12, 2006. Comments and related material on this temporary final rule must reach the Coast Guard on or before December 13, 2005.

ADDRESSES: You may mail comments and material received to U.S. Coast Guard Marine Safety Office, PO Box 486, Valdez, Alaska 99686. Marine Safety Office Valdez, Port Operations Department maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Valdez, 105 Clifton, Valdez, AK 99686 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Duane Lemmon, Port Operations Department, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7218.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 30, 2005, we published a temporary final rule entitled "Security Zones; TAPS Terminal, Valdez Narrows, and Tank Vessels in COTP Prince William Sound" in the **Federal Register** (70 FR 37681). That rule is only effective to October 11, 2005.

A notice of proposed rulemaking (NPRM) was not published for this regulation. In accordance with 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. The Coast Guard is taking this action for the immediate protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001, and the continuing threat that remains from those who committed those acts. Also, in accordance with 5 U.S.C 553(d)(3), the Coast Guard finds good cause to exist for making this regulation effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to provide for the safety of the TAPS terminal and TAPS tank vessels.

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these zones are—

Section 165.T17–003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska,

Section 165.T17–004—Security zone; Port Valdez, and

Section 165.T17–005—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

Then on June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace these security zones. That rule issued in April 2002, which expired July 30, 2002, created temporary § 165.T17–009, entitled "Port Valdez and Valdez Narrows, Valdez, Alaska—security zone".

Then on July 31, 2002, we published a temporary final rule (67 FR 49582) that established security zones to extend the temporary security zones that would have expired. This extension was to allow for the completion of a notice-and-comment rulemaking to be completed to create a permanent security zones to replace the temporary zones.

On October 23, 2002, we published the notice of proposed rulemaking that sought public comment on establishing permanent security zones similar to the temporary security zones (67 FR 65074). The comment period for that NPRM ended December 23, 2002. Although no comments were received that would result in changes to the proposed rule an administrative omission was found that resulted in the need to issue a supplemental notice of proposed rulemaking (SNPRM) to address a collection of information of the proposed rule (68 FR 14935, March 27, 2003). Then, on December 30, 2002, we issued a temporary final rule (68 FR 26490, May 16, 2003) that established security zones to extend the temporary security zones until June 30, 2003. This extension was to allow for a rulemaking for the permanent security zones to be completed. Then, on October 31, 2003, we published a temporary final rule (68 FR 62009) that established security zones to extend the temporary security zones through March 12, 2004. Then on May 19, 2004, we published a Second Supplemental Notice of Proposed Rulemaking (SSNPRM) (69 FR 28871) incorporating changes to the Trans Alaskan Pipeline system, Valdez Marine Terminal (VMT) security zone coordinates described in the NPRM (67 FR 65074). Then on October 7, 2005 we published a TSNPRM (70 FR 58646) with revisions to our proposed permanent security zones in the same locations as the temporary zones created by this rule.

This temporary final rule creates temporary security zones through January 12, 2006, to allow for the rulemaking involving the TSNPRM to be completed.

Discussion of This Temporary Rule

This temporary final rule continues two security zones without change in their size and continues but revises the size of a third temporary security zone. The Trans-Alaska Pipeline Valdez Terminal complex, Valdez, Alaska and TAPS Tank Vessels security zone encompasses the waters of Port Valdez between Allison Creek to the east and Sawmill Spit to the west and offshore to marker buoys A and B (approximately 1.5 nautical miles offshore from the TAPS Terminal). The Tank Vessel Moving security zone encompasses the waters within 200 yards of a TAPS Tanker within the Captain of the Port, Prince William Sound Zone. The Valdez Narrows, Port Valdez, Valdez, Alaska, security zone encompasses the waters 200 yards either side of the Tanker Optimum Trackline through Valdez Narrows between Entrance Island and Tongue Point.

The Coast Guard has worked closely with local and regional users of Port Valdez and Valdez Narrows waterways to develop these security zones in order to mitigate the impact on commercial and recreational users. This temporary final rule establishes a uniform transition from the temporary operating zones while the rulemaking for permanent security zones is completed.

Request for Comments

Although the Coast Guard has good cause in implementing this regulation without a notice of proposed rulemaking, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP Prince William Sound 05–012, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Economic impact is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permits to enter the zone are available, and the Tanker Moving Security Zone is in effect for a short duration.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by this rule is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permits to enter the zone are available, and the Tanker Moving Security Zone is in effect for a short duration. Since the time frame this rule is in effect may cover commercial harvests of fish in the area, the entities most likely affected are commercial and native subsistence fishermen. The Captain of the Port will consider applications for entry into the security zone on a case-by-case basis; therefore, it is likely that very few, if any, small entities will be impacted by this rule. Those interested may apply for a permit to enter the zone by contacting Marine Safety Office, Valdez at the above contact number.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement

Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule creates no additional vessel traffic and thus imposes no additional burdens on the environment in Prince William Sound. It simply provides guidelines for vessels transiting in the Captain Of The Port, Prince William Sound Zone so that vessels may transit safely in the vicinity of the Port of Valdez and the TAPS terminal. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T17–021 to read as follows:

§ 165.T17–021 Port Valdez and Valdez Narrows, Valdez, Alaska-security zones.

(a) *Location.* The following areas are security zones:

(1) *Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels.* All waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°05′03.6″ N, 146°25′42″ W; thence northerly to yellow buoy at 61°06′00″ N, 146°25′42″ W; thence east to the yellow buoy at 61°06′00″ N, 146°21′30″ W; thence south to 61°05′06″ N, 146°21′30″ W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point.

(2) *Tank Vessel Moving Security Zone.* All waters within 200 yards of any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85–20 (b).

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters 200 yards either side of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05′15″ N, 146°37′18″ W; thence south west to 61°04′00″ N, 146°39′52″ W; thence southerly to 61°02′32.5″ N, 146°41′25″ W; thence north west to 61°02′40.5″N, 146°41′47″ W; thence north east to 61°04′07.5″ N, 146°40′15″ W; thence north east to 61°05′22″ N, 146°37′38″ W; thence south east back to the starting point at 61°05′15″ N, 146°37′18″ W.

(b) *Regulations.* (1) The general regulations in 33 CFR 165.33 apply to the security zones described in paragraph (a) of this section.

(2) Tank vessels transiting directly to the TAPS terminal complex, engaged in the movement of oil from the terminal or fuel to the terminal, and vessels used to provide assistance or support to the tank vessels directly transiting to the terminal, or to the terminal itself, and that have reported their movements to the Vessel Traffic Service, as required under 33 CFR part 161 and § 165.1704, may operate as necessary to ensure safe

passage of tank vessels to and from the terminal.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

Dated: October 3, 2005.

R.E. Bailey,

Lieutenant Commander, United States Coast Guard, Alternate Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 05–20636 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R09–OAR–2005–CA–0009; FRL–7975–1]

Revisions to the California State Implementation Plan, Monterey Bay United Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Monterey Bay United Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) and sulfur compounds emitted by various sources. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 13, 2005 without further notice, unless EPA receives adverse comments by November 14, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2005–CA–0009, by one of the following methods:

1. Agency Web site: *http://docket.epa.gov/rmepub/*. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.

3. E-mail: *steckel.andrew@epa.gov*.

4. Mail or deliver: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency website, eRulemaking portal or e-mail. The agency website and eRulemaking portal are "anonymous access" systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://docket.epa.gov/rmepub* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956, *Donez.Francisco@epa.gov*.

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

Table of Contents

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the respective dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
MBUAPCD	404	Sulfur Compounds and Nitrogen Oxides	12/15/04	01/13/05

On February 16, 2005, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51, Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 404 into the SIP on June 12, 2001 (66 FR 31554). The MBUAPCD adopted revisions to the SIP-approved version on December 15, 2004, and CARB submitted them to us on January 13, 2005.

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

Revised Rule 404 exempts maintenance operations on crude oil production casing gas collection, treatment and destruction systems from Rule 404's sulfur limits. In addition, the exemption for agricultural operations is eliminated in the revised rule. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The MBUAPCD is listed as being in attainment for the national ambient air quality standards (see 40 CFR part 81). Therefore, for purposes of controlling sulfur compounds and nitrogen oxides, Rule 404 needs only comply with the general provisions of Section 110 of the Act.

Guidance and policy documents that we use to help evaluate enforceability requirements consistently include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement), 57 FR 55620, November 25, 1992.

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

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

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The exemption for oil well casing gas will allow some emissions of methane (CH_4) and hydrogen sulfide (H_2S). Because these gases are not regulated under the National Ambient Air Quality Standards (NAAQS), the exemption of these emissions does not constitute a reason for rule disapproval. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

EPA has no recommendations for further improvements to this rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by November 14, 2005, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 13, 2005. This will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 13, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 13, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(335)(i)(A)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(335) * * *

(i) * * *

(A) * * *

(*3*) Rule 404, adopted on December 15, 2004.

* * * * *

[FR Doc. 05–20603 Filed 10–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2005–WI–0002; FRL–7974–4]

Approval and Promulgation of Maintenance Plan Revisions; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving an alternative volatile organic compounds (VOC) control device for Serigraph, Inc. (Serigraph) as a revision to the Wisconsin State Implementation Plan (SIP). On May 18, 2005, the Wisconsin Department of Natural Resources submitted a request to revise the Wisconsin SIP. The revision approves Serigraph's use of a biofilter to control VOC emissions from its printing facility in Washington County, Wisconsin. The biofilter will achieve VOC emission reductions at or beyond the level of the control methods listed in the SIP. Serigraph has designed one of its plants as a permanent total enclosure (PTE), which captures all VOC emissions and routes them to the biofilter. There are no fugitive emissions from the plant. This control system will reliably control emissions at or below the level of Federally mandated emission limits.

DATES: This rule is effective on December 13, 2005, unless EPA receives adverse written comments by November 14, 2005. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–WI–0002, by one of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments. Agency Web site: *http://docket.epa.gov/rmepub/.* Regional RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: *mooney.john@epa.gov.*

Fax: (312) 886–5824.

Mail: You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–WI–0002. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register.**

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. General Information

A. Does this action apply to me?

This action applies to a single source—Serigraph, Incorporated in Washington County, Wisconsin.

B. How can I get copies of this document and other related information?

1. The Regional Office has established an electronic public rulemaking file available for inspection at RME under ID No. R05–OAR–2005–WI–0002, and a hard copy file which is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include CBI or other information the disclosure of which is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

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

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

C. How and to whom do I submit comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket R05–OAR–2005–WI–0002" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the proposed rules section of this **Federal Register**.

II. What is EPA approving?

EPA is approving a revision to the Wisconsin VOC SIP for Serigraph. The revision approves Serigraph's use of a biofilter to control VOC emissions from several lines in Plant 2 at its facility. This is an alternative to the control methods listed in the SIP. An alternate control method is allowed under section NR 422.04(2)(d) of the Wisconsin Administrative Code. The biofilter will reliably control VOC emissions at a similar level with other control techniques for surface printing facilities. Plant 2 is designed as a PTE, which ensures a 100% capture efficiency. An 80% overall control efficiency for VOC emissions is required for this control device. Overall control efficiency includes both capture and destruction efficiencies. Serigraph's biofilter has achieved a greater than 85% overall control efficiency.

III. What are the changes from the current rule?

Southeastern Wisconsin screen printers are required to use low solvent coatings or a control device to limit VOC emissions. This requirement is found in section NR 422.04(2) of the Wisconsin Administrative Code. The control devices allowed are vapor recovery systems or vapor incinerators. Section NR 422.04(2)(d) adds that a printer may use an alternate control device if it will reliably control VOC emissions to a level at or below the applicable emission limit and is approved by the Wisconsin Department of Natural Resources. Federal approval of the alternative control device is required for this change to the Wisconsin SIP.

IV. What is EPA's analysis of the supporting material?

Serigraph is adding a biofilter on its Plant 2 printing facility as an alternative VOC emissions control device. The print room is designed as a PTE ensuring all of the print room emissions are exhausted into the biofilter. Serigraph's biofilter system consists of two humidifiers and two media chambers. Each biofilter unit can operate independently. This allows for emission control even when a unit is offline. The print room exhaust goes through a humidifier then the warm, moist gas stream proceeds into the media chamber. Microorganisms in the media chemically convert the VOC into carbon dioxide and water. Fans in each chamber control the rate of the gas moving through the media so that proper conversion occurs. For Serigraph's system, the media retention time should be about 30 seconds. The biofilter exhausts through a 25 foot stack. Testing of the gas in the print room exhaust duct and the biofilter exhaust stack will confirm that Serigraph's control device reduces the VOC emissions by the required amount. The biofilter has been in operation since May 1997. An average of 54 tons of VOC emissions are vented to the biofilter each year. The average exhaust from the biofilter is about 8 tons of VOC per year. This easily exceeds the 80% control requirement.

V. What action is EPA taking today?

EPA is approving, through direct final rulemaking, revisions to the VOC regulations for Serigraph, Inc. in Washington County, Wisconsin.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective December 13, 2005, without further notice unless we receive relevant adverse written comments by November 14, 2005. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be

addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective December 13, 2005.

VI. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

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

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

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.*).

Congressional Review Act

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 13, 2005. 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: September 15, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of 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 YY—Wisconsin

■ 2. Section 52.2570 is amended by adding paragraph (c)(112) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(112) On May 18, 2005, Wisconsin Department of Natural Resources submitted a source specific State Implementation Plan revision. Serigraph, Inc. in Washington County is seeking to use an alternative volatile organic compounds control device. Serigraph, Inc. will use a biofilter to control volatile organic compound emissions from sources in its Plant 2. This is considered an equivalent control system under section NR 422.04(2)(d) of the Wisconsin Administrative Code because it will reliably control emissions at or below the level of the

applicable emission limits, Wisconsin Administrative Code section NR 422.145.

(i) Incorporation by reference.

Department of Natural Resources Findings of Fact, Conclusions of Law, and Decision AM–04–200 dated November 24, 2004.

[FR Doc. 05–20604 Filed 10–13–05: 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 051007258–5258–01; I.D. 100505D]

RIN 0648–AT96

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary rule.

SUMMARY: NMFS issues this temporary rule for a period of 30 days, to allow shrimp fishermen to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in state and Federal waters off Cameron Parish, Louisiana (approximately 92°37′ W. long.), westward to the boundary shared by Matagorda and Brazoria Counties, Texas, and extending offshore 50 nautical miles. This action is necessary because environmental conditions resulting from Hurricane Rita are preventing some fishermen from using TEDs effectively.

DATES: Effective from October 11, 2005 through November 10, 2005.

ADDRESSES: Requests for copies of the Environmental Assessment on this action should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727–551–5794.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken, and some are killed, as a result of numerous activities, including fishery-related trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, the taking of sea turtles is prohibited, with exceptions identified in 50 CFR 223.206(d), or according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to an incidental take permit issued under section 10 of the ESA. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic area, Gulf area, and summer flounder sea turtle protection area, see 50 CFR 223.206) to have a NMFS-approved TED installed in each net that is rigged for fishing to allow sea turtles to escape. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED the Parker soft TED (see 50 CFR 223.207).

TEDs incorporate an escape opening, usually covered by a webbing flap, which allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (50 CFR 223.207(e)(1)). Most approved hard TEDs are described in the regulations (50 CFR 223.207(a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

The regulations governing sea turtle take prohibitions and exemptions provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 223.206(d)(3)(ii) specify that the NOAA Assistant Administrator for Fisheries (AA) may authorize compliance with tow time restrictions as an alternative to the TED requirement if the AA determines that the presence of algae, seaweed, debris, or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable. The provisions of 50 CFR 223.206(d)(3)(i) specify the maximum tow times that may be used when tow time limits are authorized as an alternative to the use of TEDs. Each tow may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31, as measured from the time that the trawl doors enter the water until they are removed from the water. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

Recent Events

On September 27, 2005, the NMFS Southeast Regional Administrator received requests from the Louisiana Department of Wildlife and Fisheries (LADWF) and the Texas Parks and Wildlife Department (TPWD) to allow the use of tow times as an alternative to TEDs in state and federal waters because of the presence of excessive storm-related debris on the fishing grounds as a result of Hurricane Rita. When a TED is clogged with debris, it can no longer catch shrimp effectively nor can it effectively exclude turtles. Phone conversations between NMFS Southeast Region's Protected Resources staff, fishermen, and state resource agency staffs confirm there are problems with debris in state and Federal waters off Louisiana, westward to the boundary shared by Matagorda and Brazoria Counties, Texas, and extending offshore 50 nautical miles, which are likely to affect the effectiveness of TEDs.

Special Environmental Conditions

The AA finds that debris washed into state and Federal waters by Hurricane Rita off Cameron Parish, Louisiana (approximately 92°37′ W. long.), westward to the boundary shared by Matagorda and Brazoria Counties, Texas, and extending offshore 50 nautical miles, has created special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to authorize the use of restricted tow times as an alternative to the use of TEDs in state and federal waters off Cameron Parish, Louisiana (approximately 92°37′ W. long.), westward to the boundary shared by Matagorda and Brazoria Counties, Texas, and extending offshore 50 nautical miles, for a period of 30 days. Tow times must be limited to no more

than 55 minutes measured from the time trawl doors enter the water until they are retrieved from the water.

Continued Use of TEDs

NMFS encourages shrimp trawlers in the affected areas to continue to use TEDs if possible, even though they are authorized under this action to use restricted tow times.

NMFS' gear experts have provided several general operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can trap debris either on or in front of the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Lastly, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly: the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris. The use of the double cover flap TED will also aid in debris exclusion.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in the affected areas. This action does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Alternative to Required Use of TEDs

The authorization provided by this rule applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 223.206(d)(2) who are operating in state and Federal waters affected by Hurricane Rita off Cameron Parish, Louisiana (approximately 92° 37′ W. long.), westward to the boundary shared by Matagorda and Brazoria Counties, Texas, and extending offshore 50 nautical miles, for a period of 30 days. Through this temporary rule, shrimp trawlers may choose either restricted tow times or TEDs to comply with the sea turtle conservation regulations, as prescribed above.

Alternative to Required Use of TEDs; Termination

The AA, at any time, may withdraw or modify this temporary authorization to use tow time restrictions in lieu of TEDs through publication of a notice in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times, synchronized tow times, or withdrawal of the authorization if the AA determines that the alternative authorized by this rule is not sufficiently protecting turtles or no longer needed. The AA may also terminate this authorization if information from enforcement, state authorities, or NMFS indicates compliance cannot be monitored effectively. This authorization will expire automatically on November 10, 2005, unless it is explicitly extended through another notification published in the **Federal Register**.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA has determined that this action is necessary to respond to an environmental situation to allow more efficient fishing for shrimp, while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and applicable regulations.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this rule. The AA finds that unusually high amounts of debris are creating special environmental conditions that make trawling with TED-equipped nets impracticable. Prior notice and opportunity to comment are impracticable and contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing the affected industry relief from the effects of Hurricane Rita in a timely manner.

The AA finds that there is good cause to waive the 30–day delay in effective date pursuant to 5 U.S.C. 553(d)(3) to provide alternatives to comply with the sea turtle regulations in a timely manner. Many fishermen may be unable to operate under the special environmental conditions created by Hurricane Rita without an alternative to using TEDs. Providing a 30–day delay in effective date would prevent the agency from providing the affected industry relief from the effects of Hurricane Rita in a timely manner. For the reasons above, the AA finds that this temporary rule should not be subject to a 30–day delay in effective date, pursuant to 5 U.S.C. 553(d)(1).

Since prior notice and an opportunity for public comment are not required to be provided for this action by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The AA prepared an Environmental Assessment (EA) for this rule. Copies of the EA are available (see **ADDRESSES**).

Dated: October 11, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–20597 Filed 10–11–05; 1:14 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 198
Friday, October 14, 2005

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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 307

RIN 3064–AC93

Notification of Changes of Insured Status

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing to revise its regulation addressing the certification to the FDIC of the assumption of deposits and the notification to depositors of a change in insured status. The proposed revision would clarify that a certification is required only when all of an insured institution's deposit liabilities have been assumed and that no certification is required for partial deposit assumptions. The proposal would require the institution whose deposits are transferred, or its legal successor, to provide the notification rather than the institution assuming the deposits. Finally, the proposal would also clarify the circumstances in which the FDIC would issue orders reflecting that an institution's insured status has been terminated under section 8(q) of the Federal Deposit Insurance Act. Generally, no orders would be issued when an insured institution transfers all of its deposits and its authority to engage in banking is contemporaneously cancelled, nor when the FDIC has been appointed receiver for an insured institution in default.

DATES: Written comments on the Proposal must be received by the FDIC on or before December 13, 2005 for consideration.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments.
- E-mail: *comments@fdic.gov*. Include "Part 307—Notification of Changes of Insured Status" in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery: Comments may be hand-delivered to the guard station located at the rear of the FDIC's 550 17th Street building (accessible from F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions must include the agency name and use the title "Part 307—Notification of Changes of Insured Status."

All comments received will be posted without change to, *http://www.fdic.gov/regulations/laws/federal/propose.html*, including any personal information provided.

Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Kevin W. Hodson, Chief, Risk Management and Applications Section II, Division of Supervision and Consumer Protection, (202) 898–6919; Donald R. Hamm, Review Examiner, Division of Supervision and Consumer Protection, (202) 898–3528; Thomas Nixon, Counsel, Legal Division, (202) 898–8766; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC's Part 307 contains two sections. Section 307.1 implements section 8(q) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1818(q)), which states:

> Whenever the liabilities of an insured depository institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract
>
> (1) the insured status of the depository institution whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption;
>
> (2) the separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period. * * *

All assumptions of insured deposit liabilities, whether a "total" assumption of all the transferring institution's deposits or an assumption of only a portion of its deposits (a "partial" assumption), by an insured institution are subject to the Bank Merger Act and require the prior written approval of the "responsible agency." [1] The responsible agency is the primary Federal regulator of the assuming institution.

The current section 307.1 was last revised in 1983. It requires an assuming institution to provide a certification to the FDIC "[w]henever the deposit liabilities of an insured bank * * * are assumed by another insured bank. * * * *" In 1997, the FDIC published a notice of proposed rulemaking concerning Part 307 which was not made final.[2] The preamble to that proposed rulemaking indicated that the FDIC's view of the current text of section 307.1 was that certifications should be made for both partial and total assumptions. Since the text of section 307.1 does not clearly distinguish between partial and total assumptions, institutions may be unsure whether a certification is required for partial deposit assumptions.

An insured depository institution that proposes to voluntarily terminate its insured status without transferring all of its deposits to an FDIC insured institution must obtain the FDIC's permission. (FDI Act section 18(i)(3), 12 U.S.C. 1828(i)(3)).[3] Section 307.2

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[1] FDI Act section 18(c)(2), (12 U.S.C. 1828(c)(2)), reads as follows:

> No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency. * * *

[2] 62 FR 26431, May 14, 1997. That proposal is withdrawn.

[3] This proposal would not affect the requirements for FDIC approval of voluntary deposit insurance terminations under sections 8(a) and 8(p) of the FDI Act and for prior written consent for the conversion of an insured depository institution into a noninsured bank or institution as required by section 18(i)(3).

applies section 8(a)(6) of the FDI Act [4] to voluntary terminations of insured status. Under section 307.2, an insured bank or insured branch of a foreign bank seeking to voluntarily terminate its insured status, but whose deposits will not be assumed by another insured depository institution, must provide notice to its depositors of the date its insured status will terminate. The regulation authorizes the appropriate FDIC Regional Director of the Division of Supervision and Consumer Protection to approve the form, manner, and timing of the notice to depositors and provides authority to the FDIC to take such other steps as may be deemed necessary for the protection of the institution's depositors.

II. The Proposed Rule

A. Revised Caption of the Part

The caption of the Part would be changed from "Notification of Changes of Insured Status" to "Certification of Assumption of Deposits and Notification of Changes of Insured Status." This would make the caption more descriptive of the content of the Part and alert institutions that the Part addresses deposit assumptions as well as changes in insured status.

B. Section 307.1—Scope and Purpose

The current Part 307 does not have a scope and purpose section. In addition, since Part 307 has not been revised since 1983, sections 307.1 and 307 .2 continue to refer to an "insured bank" rather than to an "insured depository institution," consistent with the changes made to the FDIC's responsibilities and terminology by sections 201 and 202 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.[5] The proposed rule would add a new section 307.1 to indicate that the Part applies to insured depository institutions as defined in section 3(c)(2) of the FDI Act,[6] and to describe the purpose of the Part. The existing sections 307.1 and 307.2 would be redesignated as sections 307.2 and 307.3, respectively.

C. Section 307.2—Certification of Assumption of Deposit Liabilities

When certification is required. As noted, there may be some ambiguity whether the current certification requirement applies only to total deposit assumptions, or also to partial assumptions. Today's proposed rule would clarify that a certification is required only when there has been a total assumption of deposits. No certification would be required in the case of a partial transfer of deposits, for example when a single branch of an institution is sold. Clarifying that no certification is necessary for a partial assumption is consistent with the FDIC's goal of reducing regulatory burden pursuant to Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 [7] while obtaining sufficient information for the proper implementation of section 8(q) of the FDI Act.[8]

There may be situations in which an insured depository institution disposes of all of its deposits through a series of simultaneous partial deposit assumptions involving multiple assuming institutions, rather than through a single total deposit assumption by one assuming institution. An example of this would be where all of the deposits of a transferring institution were assumed through a series of branch acquisitions by different assuming institutions that occurred on the same day. Viewed cumulatively, these partial assumptions would amount to a total assumption of the deposits of the transferring institution making certification necessary. In this situation, today's proposal would require that the transferring institution file a certification.

The current section 307.1 also does not distinguish between a deposit assumption involving operating institutions versus an assumption involving an institution in default and in FDIC receivership. The FDIC plays an integral role in the transfer and assumption of deposit liabilities when it is appointed as receiver for an insured depository institution in default, and has in its possession information regarding the deposit transfer and assumption transaction. Section 307.2(a) of today's proposal would create an explicit exception from the certification requirement when the deposit liabilities are being transferred from an insured depository institution in default and the FDIC has been appointed as receiver.

Who must make the certification. The proposed rule would require the transferring institution, or its legal successor ("transferring institution"), rather than the assuming institution, to provide certification to the FDIC. Generally, an institution transferring deposit liabilities will be in a better position than the assuming institution to know whether the transfer constitutes all of its deposits, thus triggering application of Part 307 and FDI Act section 8(q). This would be particularly true in the case of an institution that transfers all of its deposit liabilities through multiple transfers to a variety of assuming institutions. In such a situation, it may be difficult for the assuming institutions to have sufficient knowledge of key facts in order to make accurate certifications. In a merger or consolidation there may be only one surviving entity which is the legal successor to both the transferring and assuming institutions. In such instances, that surviving entity would provide any required certification.

Content and form of the certification. Proposed section 307.2(b) would establish the certification's content. The requirements are similar to the current section 307.1 but clarify certain issues, such as where certifications should be filed with the FDIC, and the need for the certification to be on the letterhead of the transferring institution or its legal successor and to be signed by an authorized official. In addition, the proposal would require an institution that is contemporaneously relinquishing its authority to engage in the business of receiving deposits to provide the date that its authority terminated (or will terminate) as well as the method of termination (e.g., whether by the surrender of its charter, the cancellation of its charter or license to conduct a banking business, or otherwise). As discussed below, this information would be used by the FDIC to evaluate the need to issue an order terminating insurance. To assist the industry with compliance, the proposed rule provides a template (Appendix A) that may be used to satisfy with proposed section 307.2 certification requirements.

Evidence of Assumption. The current section 307.1 states that a certification made pursuant to section 307.1 "shall

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[4] 12 U.S.C. 1818(a)(6). Section 8(a)(6) reads as follows:

PUBLICATION OF NOTICE OF TERMINATION.—The Corporation may publish notice of such termination and the depository institution shall give notice of such termination to each of its depositors at his last address of record on the books of the depository institution, in such manner and at such time as the Board of Directors may find to be necessary and may order for the protection of depositors.

[5] Public Law 101–73, 103 Stat. 103.

[6] 12 U.S.C. 1813(c)(2). An "insured depository institution" is defined as "any bank or savings association the deposits of which are insured by the Corporation pursuant to this [the FDI] Act." Federal branches and insured branches are included in the definition of "bank" in section 3(a)(1)(A) (12U.S.C. 1813(a)(1)(A)).

[7] Public Law 104–208, Sept. 30, 1996. 12 U.S.C. 3311.

[8] The 1997 proposed rule had envisioned that the certification of partial assumption could be used by the FDIC to determine when the separate deposit insurance coverage provided by section 8(q) on the assumed deposits ended. However, the FDIC can rely on other sources of information to make a separate deposit insurance coverage determination when necessary (for example, from information provided directly to the FDIC by insured depository institutions or by other Federal banking agencies, as well from the underlying transactional documents).

be considered satisfactory evidence of the assumption." Proposed section 307.2(d) makes a similar statement for accurate certifications that have been made consistent with the requirements of proposed section 307.2 (a), (b) and (c). The term "accurate" has been added to indicate that a materially inaccurate certification would not trigger the automatic termination of the transferring institution's insured status. The proposed section 307.2(d) would also allow the FDIC to consider other evidence, in addition to a certification, of a total deposit assumption to constitute satisfactory evidence of an assumption for the purposes of section 8(q).

Issuance of an Order. Section 8(q) can be construed as automatically terminating an institution's insured status upon the FDIC's receipt of satisfactory evidence of a total assumption. The FDIC did not generally issue orders terminating the insured status of transferring institutions before 1983 when the rule was last revised, and the current section 307.1 does not discuss the issuance of such orders.[9] In most cases of total deposit assumptions, the transferring institution's authority to engage in banking is contemporaneously cancelled. In such a situation, an FDIC order confirming the termination of insurance has no practical effect and is unnecessary. Accordingly, under the proposed rule no order confirming the termination of an institution's insured status would generally be issued when the transferring institution's authority to engage in banking is cancelled contemporaneously (i.e., generally within five business days after all deposits have been assumed). The proposed rule also would not require orders when deposits are transferred and assumed after a default when the FDIC has been appointed as receiver.

The proposed rule would provide for the issuance of an FDIC order confirming the termination of the insured status of a transferring institution in the relatively limited circumstance in which a total transfer of deposit liabilities has occurred but the transferring institution's charter is not contemporaneously cancelled. Absent the entry of an order confirming the termination of insured status, an institution in such a situation might attempt to resume accepting deposits sometime after the assumption transaction occurs; an institution might also attempt to sell its charter, which could allow what is in fact a new entity to conduct banking operations without always requiring FDIC review and approval.[10]

D. Section 307.3—Notice to Depositors When Insurance Is Voluntarily Terminated and Deposits Are Not Assumed

As noted earlier, a bank that has obtained the FDIC's permission under sections 8(a), 8(p) or 18(i)(3) of the FDI Act to terminate its insured status without transferring all of its deposits to an FDIC insured institution is required by the current section 307.2 to provide notice to each of its depositors. A copy of this notice must be provided to and approved by the appropriate Regional Director of the Division of Supervision and Consumer Protection prior to the notice being distributed to the institution's depositors. The proposed rule would clarify that the notice must be on the institution's letterhead, signed by a duly authorized officer and sent to the depositor's last known address on the institution's books. To assist the industry with compliance, the proposed rule provides a template (Appendix B) that may be used to satisfy with proposed section 307.3 certification requirements.

III. Regulatory Analysis and Procedure

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information contained in this proposed rule has been submitted to OMB for review.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC concerning the Paperwork Reduction Act implications of this proposal. Such comments should refer to "Notification of Changes of Insured Status, 3064–0124." Comments on Paperwork Reduction Act issues may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- E-mail: *comments@FDIC.gov.* Include "Notification of Changes of Insured Status, 3064–0124" in the subject line of the message.
- Mail: Thomas Nixon (202–898–8766), Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery: Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, or by electronic mail to *mmenchik@omb.eop.gov.*

Comment is solicited on:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Title of the collection: The proposed rule will modify an information collection previously approved by OMB titled "Notification of Changes of Insured Status" under control number 3064–0124. The collection's title would be changed to "Certification of Assumption of Deposits and Notification of Changes of Insured Status."

Summary of the current collection: The collection consists of two parts: a certification that an insured depository institution provides when it has assumed the deposit liabilities of another insured institution; and a notification to depositors that an insured institution provides if it has obtained FDIC approval to voluntarily terminate its insured status without an assumption of deposits.

Need and use of the information: The certification is required to implement section 8(q) of the FDI Act to determine when the insured status of an institution is terminated based on an assumption of its deposits. The depositor notification, required by Part 307 informs depositors

[9] The 1997 proposed rule would have provided that the FDIC would generally issue an order terminating the insured status of an institution that transferred all of its deposits.

[10] The transfer of the charter would require prior approval under the Bank Merger Act or the Change in Bank Control Act.

that the insured status of their deposits in the institution will terminate.

Proposed changes to the collection: The proposed rule will modify the collection by eliminating certifications of assumption for partial assumptions of deposits and will require certifications to be made by the transferring institution rather than the assuming institution. No changes are proposed in the notice to depositors.

Respondents: Insured depository institutions.

Frequency of response: Occasional.

Annual burden estimate: Number of certifications: 280; number of depositor notices: 5. Average time to prepare a certification: one quarter hour; depositor notice: 1 hour. Total annual burden: 75 hours.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the FDIC certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would reduce regulatory burden by eliminating the need for a certification to be filed with the FDIC when the liability for some, but not all, of the deposits of an insured institution are transferred to another institution. A certification requires a minimal amount of time and resources since it reports information readily available to the institution making the certification.

List of Subject in 12 CFR Part 307

Bank deposit insurance, Reporting and recordkeeping requirements.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to revise Part 307 of Title 12 of the Code of Federal Regulations to read as follows:

PART 307—CERTIFICATION OF ASSUMPTION OF DEPOSITS AND NOTIFICATION OF CHANGES OF INSURED STATUS

Sec.

Authority: 12 U.S.C. 1818(a)(6); 1818(q); and 1819(a) [Tenth].

§ 307.1 Scope and purpose.

(a) *Scope.* This Part applies to all insured depository institutions, as defined in section 3(c)(2) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1813(c)(2)).

(b) *Purpose.* This Part sets forth the rules governing: (1) The time and manner for providing certification to the FDIC regarding the assumption of all of the deposit liabilities of an insured depository institution by one or more insured depository institutions; and (2) The notification that an insured depository institution shall provide its depositors when a depository institution's insured status is being voluntarily terminated without its deposits being assumed by one or more insured depository institutions.

§ 307.2 Certification of assumption of deposit liabilities.

(a) *When certification is required.* Whenever all of the deposit liabilities of an insured depository institution are assumed by one or more insured depository institutions by merger, consolidation, other statutory assumption, or by contract, the transferring insured depository institution, or its legal successor, shall provide an accurate written certification to the FDIC that its deposit liabilities have been assumed. No certification shall be required when deposit liabilities are assumed by an operating insured depository institution from an insured depository institution in default, as defined in section 3(x)(1) of the FDI Act (12 U.S.C. 1813(x)(1)), and that has been placed under FDIC receivership.

(b) *Certification requirements.* The certification required by paragraph (a) of this section shall be provided on official letterhead of the transferring insured depository institution or its legal successor, signed by a duly authorized official, and state the date the assumption took effect. The certification shall indicate the date on which the transferring institution's authority to engage in banking has terminated or will terminate as well as the method of termination (e.g., whether by the surrender of its charter, by the cancellation of its charter or license to conduct a banking business, or otherwise). The certification may follow the form contained in appendix A of this part. In a merger or consolidation where there is only one surviving entity which is the legal successor to both the transferring and assuming institutions, the surviving entity shall provide any required certification.

(c) *Filing.* The certification required by paragraph (a) of this section shall be provided within 30 calendar days after the assumption takes effect, and shall be submitted to the appropriate Regional Director of the FDIC's Division of Supervision and Consumer Protection, as defined in 12 CFR 303.2(g).

(d) *Evidence of assumption.* The receipt by the FDIC of an accurate certification for a total assumption as required by paragraphs (a), (b) and (c) of this section shall constitute satisfactory evidence of such deposit assumption, as required by section 8(q) of the FDI Act (12 U.S.C. 1818(q)), and the insured status of the transferring institution shall terminate on the date of the receipt of the certification. In appropriate circumstances, the FDIC, in its sole discretion, may require additional information, or may consider other evidence of a deposit assumption to constitute satisfactory evidence of such assumption for purposes of section 8(q).

(e) *Issuance of an order.* The Executive Secretary, upon request from the Director of the Division of Supervision and Consumer Protection and with the concurrence of the General Counsel, or their respective designees, shall issue an order confirming that the insured status of the transferring insured depository institution has been terminated as of the date of receipt by the FDIC of satisfactory evidence of such assumption, pursuant to section 8(q) of the FDI Act and this regulation. Generally, no order shall be issued, under this paragraph, and insured status shall be cancelled by operation of law:

(1) If the charter of the transferring institution has been cancelled, revoked, rescinded, or otherwise terminated by operation of applicable state or federal statutes or regulations, or by action of the chartering authority for the transferring institution essentially contemporaneously, that is, generally within five business days after all deposits have been assumed; or

(2) If the transferring institution is an insured depository institution in default and for which the FDIC has been appointed receiver.

§ 307.3 Notice to depositors when insured status is voluntarily terminated and deposits are not assumed.

(a) *Notice required.* An insured depository institution that has obtained authority from the FDIC to terminate its insured status under sections 8(a), 8(p) or 18(i)(3) of the FDI Act without its deposit liabilities being assumed by one or more insured depository institutions, shall provide to each of its depositors, at the depositor's last known address of record on the books of the institution, prior written notification of the date the institution's insured status shall terminate.

(b) *Prior approval of notice.* The insured depository institution shall

provide the appropriate Regional Director of the FDIC's Division of Supervision and Consumer Protection, as defined in 12 CFR 303.2(g), a copy of the proposed notice for approval. After being approved, the notice shall be provided to depositors by the insured depository institution at the time and in the manner specified by the appropriate Regional Director.

(c) *Form of notice.* The notice to depositors required by paragraph (a) of this section shall be provided on the official letterhead of the insured depository institution, shall bear the signature of a duly authorized officer, and, unless otherwise specified by the appropriate Regional Director, may follow the form of the notice contained in appendix B of this part.

(d) *Other requirements possible.* The FDIC may require the insured depository institution to take such other actions as the FDIC considers necessary and appropriate for the protection of depositors.

Appendix A to Part 307—[Transferring Institution Letterhead]

[Date]

[Name and Address of appropriate FDIC Regional Director]

SUBJECT: *Certification of Total Assumption of Deposits*

This certification is being provided pursuant to 12 U.S.C. 1818(q) and 12 CFR 307.2. On [*state the date the deposit assumption took effect*], [*state the name of the depository institution assuming the deposit liabilities*] assumed all of the deposits of [*state the name and location of the Transferring Institution whose deposits were assumed*]. [If applicable, state the date and method by which the transferring institution's authority to engage in banking was or will be terminated.] Please contact the undersigned, at [*telephone number*], if additional information is needed.

Sincerely,

By:
[Name and Title of Authorized Representative]

Appendix B to Part 307—[Institution Letterhead]

[Date]

[Name and Address of Depositor]

SUBJECT: *Notice to Depositor of Voluntary Termination of Insured Status*

The insured status of [*name of insured depository institution*] under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on [*state the date*] ("termination date"). Insured deposits in the [*name of insured depository institution*] on the termination date, less all withdrawals from such deposits made subsequent to that date, will continue to be insured by the Federal Deposit Insurance Corporation, to the extent provided by law, until [*state the date*]. The Federal Deposit Insurance Corporation will not insure any new deposits or additions to existing deposits made by you after the termination date.

This Notice is being provided pursuant to 12 U.S.C. 1818(a)(6) and 12 CFR 307.3.

Please contact [*name of institution official in charge of depositor inquiries*], at [*name and address of insured depository institution*] if additional information is needed regarding this Notice or the insured status of your account(s).

Sincerely,

By: [Name and Title of Authorized Representative]

By order of the Board of Directors, at Washington DC on this 6th day of October, 2005.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 05–20590 Filed 10–13–05; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 331 and 362

RIN 3064–AC95

Interstate Banking; Federal Interest Rate Authority

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC received a petition for rulemaking to preempt certain state laws with the stated purpose of establishing parity between national banks and state-chartered banks in interstate activities and operations. The petition also requested rulemaking to implement the interest rate authority contained in the Federal Deposit Insurance Act. Generally, the requested rules would provide that the home state law of a state bank applies to the interstate activities of the bank and its operating subsidiaries to the same extent that the National Bank Act applies to the interstate activities of a national bank and its operating subsidiaries. They would also implement the federal statutory provisions addressing interest charged by FDIC-insured state banks and insured U.S. branches of foreign banks. The FDIC is requesting comments on a proposed rule to amend the FDIC's regulations in response to the rulemaking petition. Issuance of the proposed rules would serve as the FDIC's response to the rulemaking petition.

DATES: Comments must be submitted on or before December 13, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- Agency Web site: *http://www.FDIC.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments.
- E-mail: *comments@FDIC.gov.*
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivered/Courier: The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.
- Internet Posting: Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Robert C. Fick, Counsel, (202) 898–8962; Rodney D. Ray, Counsel, (202) 898–3556; or Joseph A. DiNuzzo, Counsel, (202) 898–7349; Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. The Petition

The Financial Services Roundtable, a trade association for integrated financial services companies ("Petitioner"), has petitioned the FDIC to adopt rules concerning the interstate activities of insured state banks and their subsidiaries that are intended to provide parity between state banks and national banks. Generally, the requested rules would provide that a state bank's home state law governs the interstate activities of state banks and their operating subsidiaries ("Op Subs") [1] to the same extent that the National Bank Act ("NBA") governs a national bank's interstate business. The Petitioner requests that the FDIC adopt rules with respect to the following areas:

- The law applicable to activities conducted in a host state by a state bank that has a branch in that state,
- The law applicable to activities conducted by a state bank in a state in which the state bank does not have a branch,
- The law applicable to activities conducted by an Op Sub of a state bank,

[1] Generally, an operating subsidiary is a majority-owned subsidiary of a bank or savings association that engages only in activities that its parent bank or savings association may engage in.

• The scope and application of section 104(d) of the Gramm-Leach-Bliley Act ("GLBA")[2] regarding preemption of certain state laws or actions that impose a requirement, limitation, or burden on a depository institution, or its affiliate, and

• Implementation of section 27 of the Federal Deposit Insurance Act ("FDI Act")[3] (which permits state depository institutions to export interest rates) in a manner parallel to the rules issued by the Office of the Comptroller of the Currency ("OCC") and the Office of Thrift Supervision ("OTS").

The Petitioner argues that it is both necessary and timely for the FDIC to adopt rules that clarify the ability of state banks operating interstate to be governed by a single framework of law and regulation to the same extent as national banks. According to the Petitioner, over the last decade the federal charters for national banks and federal thrifts have been correctly interpreted by the OCC and the OTS, with the repeated support of the federal courts, to provide broad federal preemption of state laws that might appear to apply to the activities or operations of federally chartered banking institutions within a state. The result, it asserts, is that national banks and federal savings associations now can do business across the country under a single set of federal rules. In contrast, the Petitioner believes that there is widespread confusion and uncertainty with respect to the law applicable to state banks engaged in interstate banking activities. Furthermore, it argues, this uncertainty produces the potential for litigation and enforcement actions, deters state banks from pursuing profitable business opportunities, and causes substantial expense to a state bank that decides to convert to a national bank in order to gain greater legal certainty. Finally, the Petitioner asserts that the FDIC has the authority, tools and responsibility to correct this imbalance.

II. The Public Hearing

Overview

On May 24, 2005, the FDIC held a public hearing on the rulemaking petition. As indicated in the FDIC's formal announcement of the hearing (70 FR 13,413 (March 21, 2005)) the purpose of the hearing was to obtain public insight into the issues presented by the petition including how the FDIC should respond to the rulemaking request. The notice of the public hearing provided an overview of the rulemaking petition, posed general questions raised by the petition, identified legal and policy issues raised by the specific aspects of the rulemaking petition, and asked for the public's views on these and any other issues related to the petition. The notice of public hearing also included a copy of the rulemaking petition.

The sixteen speakers at the hearing presented their views on the legal, policy and other issues raised in the petition. The speakers also provided written statements. In addition, eighteen others who chose not to appear at the hearing submitted written views on the petition. The presenters at the hearing consisted of trade group representatives, state banking commissioners, representatives of consumer groups, and bankers. Those commenting who did not appear at the hearing consisted of the same categories of interested parties plus members of Congress and state attorneys general. Overall the FDIC received thirty-four written statements on the rulemaking petition.[4]

Summary of Statements in Favor of the Petition

Those in favor of the petition argued that the requested rulemaking would ensure state banks parity with national banks in their interstate operations. One speaker, representing a group of state-chartered commercial banks, stated that "[a]t stake is the continued vitality of state bank regulation and the structure and dynamics of bank regulation at the federal level that have served our nation so well." A number of state banking commissioners agreed with that statement. One commented that the dual banking system is out of balance because of the "broad OCC rulemaking of February 2004 preempting most state laws as they relate to national banks and their subsidiaries." He argued that "most banks do not want the OCC [preemption rules] rolled back but want the state charter to have parity with the federal charter" and that an FDIC rulemaking would "re-establish order" to preserve the dual banking system. A state banking association agreed with these views and added that one course for the FDIC would be to issue a rule codifying the FDIC's opinions on the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal I"), the Riegle-Neal Amendments Act of 1997 ("Riegle-Neal II")[5] and FDIC General Counsel Opinions 10 and 11[6] ("GC–10 and GC–11") on the exportation of interest rates, noting that further study might be warranted on the other aspects of the petition.

One state banking commissioner voiced opposition to the "broad unilateral preemption by charter-granting federal banking agencies" and argued that an FDIC rule is necessary to "maintain the competitiveness of the state charter." Another commented that the "greatest problem is a lack of certainty for state-chartered interstate banks." A large commercial banking organization observed that it is important to have a "real choice of regulatory regimes under which to operate an interstate banking business" and noted that its bank's "participation in the interstate marketplace as a state chartered institution may be threatened unless the FDIC acts to restore parity in the banking regulations."

An executive for a large banking organization stated that the rules applicable to national banks have given national banks a "significant advantage in operating multistate and national scale lending businesses." He maintained that, absent the requested rulemaking, state banks will continue to contend with an "extensive patchwork of additional state and local laws and regulations in crafting any national lending program or even a modest cross border program." Another banker provided an example in which his bank could not obtain approval to operate an automated teller machine in Florida because it was chartered by another state. He asserted that a national bank would not have been subject to that restriction.

An attorney for a large bank noted that the requested rulemaking would benefit not only large banks with interstate operations but also small independent banks located near state borders. She argued that, if the FDIC adopts the proposed rule, state banking supervisors likely would increase the cooperation they already have demonstrated in existing cooperative agreements governing the regulation of interstate state-chartered banks.

Proponents of the petition argued that the requested rulemaking would not lead to a "race to the bottom" by state legislatures. The "race-to-the-bottom" concern is that some states will enact minimal consumer protection laws for

[2] 15 U.S.C. 6701.

[3] 12 U.S.C. 1831d.

[4] Copies of the petition and all statements we received on the petition as well as the transcript of the hearing are available on the FDIC's Web site at: *http://www.fdic.gov/news/conferences/agency/noticemay162005publichearing.html.*

[5] Pub. L. 103–328, 108 Stat. 2338 (1994) (codified to various sections of title 12 of the United States Code); Pub. L. 105–24 (1997).

[6] *General Counsel Op. No. 10*, 63 FR 19258 (Apr. 17, 1998) and *General Counsel Op. No. 11*, 63 FR 27282 (May 18, 1998).

bank customers in order to lure banks to seek charters from those states and export those weak home-state consumer laws to host states which have more encompassing and protective consumer laws. One state banking commissioner argued that consumers would still be protected by home state and federal law in areas where host state law has been preempted. He also suggested that Congress enact national consumer laws to counteract the concern about a potential for unhealthy competition among bank chartering authorities in the area of consumer protection. Another speaker noted that effective and rigorous protection of all consumers no matter where they reside perhaps could be achieved through a partnership between the respective states and the Federal Reserve or the FDIC and through cooperative agreements between and among the states. He also suggested that the FDIC could issue regulations limiting charter conversions (of state-banks) as a means to address the potential consumer protection problem.

A state banking commissioner remarked that state legislators and attorneys general are in the business of protecting the consumers in their states; thus, it is unlikely that any state would strive to be at the bottom for consumer protection in an attempt to gain a few bank charters. Another doubted the potential for unhealthy competition among bank chartering authorities in the area of consumer protection by noting that, as to the current preemption of host state laws for national banks and federal thrifts, this "wholesale relocation of banks hasn't happened so far."

As to the FDIC's legal authority to issue the requested rulemaking, one speaker asserted that the petition is not requesting a comprehensive federal preemption of state law, but rather seeks to fully implement an existing federal statutory framework for determining which state law applies when state banks operate across state lines. He and others argued that the FDIC has ample authority to take all the actions requested in the petition. In particular, they cited sections 8, 9 and 27 of the FDI Act,[7] Riegle Neal II and section 104 of the GLBA. One banking commissioner argued that the intent of federal law is to maintain the competitive balance between the state and national charter and that the petition is asking the FDIC to exercise its authority. Another asserted that the FDIC is the proper forum and arbiter of the questions raised in the petition and declared that "[i]t's * * * [the FDIC's] law to interpret," emphasizing that the Riegle-Neal I and II provisions are codified in the FDI Act.

An attorney for a large banking organization asserted that: (i) Section 9 of the FDI Act vests sufficient power in the FDIC to implement regulations to carry out the provisions of the FDI Act; (ii) the FDIC is the only regulatory body that has the authority to issue regulations that will carry out the intent of the Riegle-Neal II and GLBA to provide parity for state-chartered banks; and (iii) section 104(d)(4) of the GLBA sets forth a broad rule for state banks and national banks that covers a full range of banking activities and "[t]he FDIC is best equipped to adopt regulations that will implement the Congressional mandate set forth in section 104(d)." One state banking commissioner expressed uncertainty over the constitutionality of the OCC's preemption rules but credited the OCC for bringing together "these various laws, interpretations, and analyses in one place as an integrated resource." He suggested that the FDIC follow suit by publishing an interpretation of federal law for state banks, including rules on section 27 of the FDI Act and Riegle-Neal II.

The president of a financial services trade group argued that the requested rulemaking would be a natural extension of the authority Congress granted to state banks under Riegle-Neal II and that interpretations of section 104 of the GLBA and section 27 of the FDI Act would clarify the scope of these activities. She urged the FDIC to issue a rule or interpretation clarifying that: (i) Section 104 applies to all lending and other activities permitted by the GLBA; (ii) the four standards set forth in sections 104(d)(4)(D) are to be read in the disjunctive as separate standards; and (iii) the reference to "other persons" in section 104(d)(4)(D)(i) should be read to include other depository institutions.

Summary of Statements Opposed to the Petition

Those opposed to the rulemaking petition generally argued that the petition is a response to a competitive imbalance attributable to the OCC's preemption regulations. One speaker, representing a trade group for realtors, stated that the "cure for any imbalance is for Congress or the OCC itself, under new leadership, to roll back the OCC regulations, not to use them as a model for the state banking system." She maintained that granting the petition would "further harm the ability of states to protect their citizens; result in undue concentration of banking services and less choice for consumers; open the door to the mixing of banking and commerce; destroy the state banking system, not save it; and disrupt the competitive balance among financial service providers." In a supplemental statement filed in response to a hearing officer's question, another representative for the trade group noted that issues relating to preemption under Riegle-Neal have not been expressly delegated to the FDIC and that the legislative history contains no mention of Congress conferring such authority on the FDIC. Citing recent case law, the representative also stated that if the FDIC were to interpret Riegle-Neal, "its interpretation would not be entitled to *Chevron* deference because the Act could also be interpreted by the OCC and the Federal Reserve Board."

An attorney for a national consumer group urged rejection of the petition because "there is no basis in federal law for allowing broad preemption of state law for state-chartered banks" and, she argued, "even if there were room for discretionary action on this question by the FDIC * * * allowing this petition would be terrible public policy, with devastating consequences for American consumers." As to the FDIC's legal authority to issue the requested regulation, she asserted that: (i) Riegle-Neal II simply put state-chartered banks on par with national banks when a state-chartered bank branches into another state; (ii) the GLBA as a whole provides no support for the position in the petition that the GLBA creates new preemptive rights to depository institutions, beyond insurance and securities activities; and (iii) state bank operating subsidiaries, agents of the banks, or other third parties are not entitled to preemptive rights.

A state banking commissioner agreed with others who commented that the FDIC does not have the statutory authority to issue the requested rulemaking and stated that "many of us do not believe the OCC has the statutory authority to do what it has done by regulation." He suggested that, "[i]nstead of adopting legally questionable regulations preempting state law, the FDIC should urge Congress to address the issue." The commissioner criticized "no-rules" states that "have chosen to eliminate traditional consumer protections, regarding consumer lending practices, in favor of economic development." He argued that "[o]nly federal laws that establish national rules applicable to all consumer lenders should be permitted to pre-empt the protection that State laws afford to their citizens."

Another consumer group spokesman reiterated the concern expressed by

[7] 12 U.S.C. 1818, 1819, and 1831d.

others about the negative effect on consumers that might result from the requested rulemaking. He said that "[i]f the petitioner's request is granted, state-chartered banks headquartered in states with weaker anti-predatory laws will be able to override the rigorous and comprehensive laws when they make loans or buy loans from brokers in states like North Carolina and New Mexico. At a time when minorities, immigrants, and women disproportionately receive high cost loans, it is counterproductive to strip states of their rights to protect citizens who are striving for their American dreams of their first time homeownership and wealth building."

Two members of Congress submitted a joint statement in opposition to the petition. They asserted that the current imbalance with respect to interstate banking operations is solely the result of the OCC's recent adoption of its preemption and visitorial regulations and that the law itself is clear and there are no gaps in the law that the FDIC needs to, or should, fill. The Congressmen offered these options to address the issues raised in the petition: (i) The OCC should revise its rules to eliminate the overly broad "obstruct, impair or condition" language to make clear what state laws are not preempted, and publish any future preemption determinations on a case-by-case basis; (ii) the relevant parties should negotiate a workable solution that identifies what national bank core banking areas are not affected by state laws, establish a mechanism to inform parties when individual laws do not apply and why, and clearly identify which regulators are responsible for policing which practices of which institutions; (iii) the courts should begin to carefully review the OCC's regulations to determine if they are consistent with the statutory framework and not so readily defer to the OCC; and (iv) Congress should adopt the Preservation of Federalism Banking Act (H.R. 5251) which is designed to clarify when state laws are applicable to state banks.

A state attorney general, writing on behalf of his state and the attorneys general of six other states, urged the FDIC to deny the petition in its entirety. He argued that the FDIC does not have the authority to adopt the requested rules, specifying that: (i) The FDIC's rulemaking authority is significantly more limited than the OCC; (ii) the FDIC is not the primary regulator of state banks and a state bank's power derives primarily from state law; and (iii) if there is a gap to fill in Riegle-Neal II and the GLBA, it is a legislative gap that only Congress can fill. He also asserted that section 104 of the GLBA fails to provide authority for the requested rules because the anti-discrimination provisions of section 104(d)(4) have nothing to do with establishing parity between national and state banks. He commented that the requested rules would not preserve the dual banking system and would undermine the ability of states to protect their citizens. In addition, he argued that the requested rules are not necessary because many states have adopted "wild card" statutes and have entered into cooperative agreements that permit state banks a considerable degree of parity with national banks.

Banking commissioners of seven states submitted a joint statement in opposition to the petition. They acknowledged that the "broad preemption by the OCC and the OTS has created an imbalance in the dual banking system," but voiced disagreement "with the means recommended by the Roundtable to restore the balance." They argued that Congress, not the FDIC, should determine whether preemption is appropriate, particularly in the light of the unsettled status of the OCC and OTS preemption rules and activities.

A consumer group spokeswoman argued that the requested rulemaking would undermine the dual banking system by "federalizing" Delaware's and South Dakota's banking laws. She noted that: In passing Riegle-Neal II Congress affirmed the importance of individual state banking regulation and Riegle-Neal II created a narrow exception to this principle by permitting interstate branching by state banks; and the portions of the GLBA relied on by the petition refer largely to the sale of insurance, not to all banking and financial activities. A representative of another consumer group characterized the petition as "audacious" and said the requested rule would have "lasting and harmful effects on New Yorkers and their communities." She suggested that the FDIC hold additional hearings at each of the FDIC's regional offices to "afford organizations like ours in New York City and across the country opportunity to comment meaningfully."

Summary of Other Views on the Petition

Some statements we received neither supported nor opposed the petition. A spokesman for the national trade group for state banking supervisors commented that "recent preemption rules * * * have significantly altered the financial regulatory system, and threaten the future of our nation's dual banking system." He said, however, that his association hesitates to turn such decision-making authority over to any one federal agency and suggested that Congress address the issues to clarify its vision of the dual banking system. A state banking commissioner argued that the "regulatory world is out of balance," but that the petition "would not solve what is wrong with our system." Similarly, a spokeswoman for a national trade group for community banks said, "[t]he balance in the dual banking system needs to be restored. However * * * we question whether this forum, as opposed to the Congress, is the appropriate one. Accordingly, we neither support nor oppose the recommendations of the petition at this time." Another national trade group for banks suggested that the FDIC and the industry undertake a broad, in-depth study of the current state of the dual banking system—strengths, weaknesses, possible remedies and possible outcomes. It added that a "quick fix" might be harmful in the long run.

A banking commissioner stated that her agency was presently in litigation on the applicability of her state's law to subsidiaries of national banks. She commented that "the issues underlying the petition * * * are of such broad scope and have such significant implications for the financial services sector that they warrant a more comprehensive review by Congress.

III. The Proposed Rules

A. Overview

The rulemaking petition raises serious and complex legal and policy issues regarding the preemption of state law in the context of interstate banking. From the comments made in connection with the public hearing, it is clear that there is a vast and sometimes strong difference of views among many bankers, industry trade groups, public advocacy groups, state attorneys general, and members of Congress on how to respond to the petition. Issuance of the proposed rules serves as the FDIC's response to the rulemaking petition. The proposed rules implement sections 24(j) and 27 of the FDI Act ("section 24(j) and section 27, respectively").[8]

B. Discussion of Section 24(j)

The Statute

Subsection (j) of section 24 currently provides the following:

(j) Activities of branches of out-of-state banks.

(1) Application of Host State Law

The laws of a host State, including laws regarding community reinvestment,

[8] 12 U.S.C. 1831a(j)(1) and 12 U.S.C. 1831d, respectively.

consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank. To the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch.

(2) Activities of Branches

An insured State bank that establishes a branch in a host State may conduct any activity at such branch that is permissible under the laws of the home State of such bank, to the extent such activity is permissible either for a bank chartered by the host State (subject to the restrictions in this section) or for a branch in the host State of an out-of-State national bank.

(3) Savings Provision

No provision of this subsection shall be construed as affecting the applicability of—

(A) any State law of any home State under subsection (b), (c), or (d) of section 1831u of this title; or

(B) Federal law to State banks and State bank branches in the home State or the host State.

(4) Definitions

The terms "host State", "home State", and "out-of-State bank" have the same meanings as in section 1831u(g) of this title.

The term "home State" as defined in 12 U.S.C. 1831u(g)(4) means "(i) with respect to a national bank, the State in which the main office of the bank is located; and (ii) with respect to a State bank, the State by which the bank is chartered."

The term "host State" as defined in section 12 U.S.C. 1831u(g)(5) means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch."

The term "out-of-State bank" as defined in section 12 U.S.C. 1831u(g)(8) means, "with respect to any State, a bank whose home State is another State."

Subsection (j) was originally enacted by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal I").[9] Riegle-Neal I generally established a federal framework for interstate branching for both State banks and national banks.

As enacted, paragraph (1) of subsection (j) originally stated that:

The laws of the host state, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the host state of an out-of-state state bank *to the same extent as such state laws apply to a branch of a bank chartered by that state.* (emphasis added).[10]

Pursuant to this paragraph a branch of an out-of-state, state bank would be subject to host state law to the same extent that a branch of a bank chartered by the host state would be.

Three years after Riegle-Neal I, Congress enacted the Riegle-Neal Amendments Act of 1997 ("Riegle-Neal II")[11] in an attempt to provide state banks that had interstate branches (*i.e.*, branches located in states other than the bank's home state) "parity" with national banks that had interstate branches. Riegle-Neal II revised the language of section 24(j)(1) to read as it currently does today:

The laws of a host State, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank. To the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch.

This change made host state law apply to a branch of an out-of-state state bank only to the extent that it applies to a branch of an out-of-state national bank.

Authority To Issue Rules Regarding Section 24(j) and Section 27

The FDIC has the authority to issue rules generally to carry out the provisions of the FDI Act. Section 9(a) of the FDI Act, 12 U.S.C. 1819(a), provides that:

[T]he Corporation * * * shall have power—

* * * * *

Tenth. To prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this Act or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency).

In addition, section 10(g) of the FDI Act, 12 U.S.C. 1820(g), provides that:

Except to the extent that authority under this Act is conferred on any of the Federal banking agencies other than the Corporation, the Corporation may—

(1) Prescribe regulations to carry out this Act; and

(2) By regulation define terms as necessary to carry out this Act.

Section 24(j) and section 27 are each, of course, provisions in the FDI Act. Furthermore, no other agency has been granted the authority to issue rules to restate, implement, clarify, or otherwise carry out, either section 24(j) or section 27. Consequently, sections 9(a) and 10(g) of the FDI Act expressly grant the FDIC the authority to issue rules with respect to sections 24(j) and 27.[12]

Interpretation of Section 24(j)(1)

Section 24(j)(1) states that host state law "shall *apply to any branch* in the host state of an out-of-state state bank to the same extent as such state laws apply to a branch of an out-of-state national bank." (emphasis added). The statute itself does not provide an explanation of what Congress meant by the phrase "apply to a branch." Clearly Congress was addressing the activities and operations of a branch in the host state, but it is not clear from the statutory text what threshold level of involvement by the branch will trigger the operation of the statute. The range of potential involvements by the branch might, under a broad interpretation, run from a very minimal involvement in the activity to, under a very narrow interpretation, performance of the entire activity at the branch by branch personnel. The proposed rules would clarify that host state law is subject to preemption when an activity is conducted at a branch of the out-of-state state bank, and would define "activity conducted at a branch" to mean an activity of, by, through, in, from, or substantially involving, a branch. This approach is within the range of interpretations permitted by the statutory language, but the statute itself does not indicate whether this interpretation is the most appropriate one. Since the language of this provision is susceptible to multiple meanings and presents important questions about how

[9] Pub. L. 103–328, 108 Stat. 2338 (Sept. 29, 1994).

[10] Pub. L. 103–328, sec. 102(b)(3)(B), 108 Stat. 2338 (Sept. 29, 1994).

[11] Pub. L. 105–24, 111 Stat. 238, (July 3, 1997).

[12] As indicated previously, a commenter asserted that the FDIC's interpretation of Riegle-Neal would not be entitled to *Chevron* deference because other Federal banking agencies could interpret the statute. The FDIC recognizes that there are federal court decisions, such as *Wachtel* v. *Office of Thrift Supervision*, 982 F.2d 581 (DC Cir. 1993), that indicate that where the same statute is administered by several agencies, deference to the interpretation of a statute by one agency is inappropriate. The *Wachtel* decision, however, arose in the context of an enforcement proceeding under section 8 of the FDI Act (12 U.S.C. 1818) which provides statutory enforcement authorities which are administered by each of the Federal banking agencies with respect to the depository institutions each agency supervises. This is distinguishable from the present situation because the FDIC is here proposing, through rulemaking under sections 9(a) and 10(g) of the FDI Act, to implement sections 24(j)(1) and 27 of the FDI Act, and no other agency has been expressly granted such authority.

it is to be applied, the statute is ambiguous.

In interpreting any ambiguous statutory provision the objective is to interpret the statute in light of the purposes that Congress sought to serve.[13] Although there are neither committee reports nor any conference report on Riegle-Neal II, there are several statements by the sponsors of Riegle-Neal II, and such statements have been accorded substantial weight in determining legislative intent.[14] In this case, evidence of Congress' intent can be found in the statements of the sponsors of Riegle-Neal II and in the testimony of witnesses urging congressional action. Specifically, Representative Marge Roukema, the principal sponsor of the legislation, stated that:

> The essence of this legislation is to provide parity between State-chartered bank and national banks * * *
>
> This legislation is critical to the survival of the dual banking system. * * *
>
> This legislation is also important for consumers, because if we do not enact this legislation, State banks will likely convert to a national charter. Certainly the incentive will be there. The end result could be that there will be no consumer protection at the State level * * *
>
> [T]he bill clarifies [that] the home State law of a State bank must be followed in situations in which a specific host State [law] does not apply to a national bank.[15]

Representative Bruce Vento echoed Representative Roukema's concerns and confirmed her views of how the bill would operate. Speaking in support of enactment, Representative Vento stated that:

> Only under the limited circumstances in which the Comptroller preempts host State laws for national banks will out-of-State State-chartered banks similarly be exempted from the laws of the host State. In those cases, the out-of-State bank will be required to follow its own home State laws as regards such activity.
>
> * * * * *
>
> In the absence of this measure, however, most State banks with out-of-State bank branches will likely change to a national charter causing the atrophy of the dual banking State-national banking [sic] system.[16]

Statements by other co-sponsors reinforce the statements of Representatives Roukema and Vento that Riegle-Neal II was intended to provide parity between state banks and national banks with regard to interstate activities.[17] In addition, Federal Reserve Board Chairman Alan Greenspan expressed the support of the Federal Reserve Board for this legislation in a letter to Representative Roukema and stated that "[t]he Riegle-Neal Clarification Act of 1997 [18] is an effort to create parity between national and state-chartered banks in operating out-of-state branches." [19] Other endorsements received by Representative Roukema that express the same understanding of the bill include those from the National Governors' Association, the Conference of State Bank Supervisors and the Independent Bankers' Association of America.[20]

The debates in the Senate also indicate that the Senate understood that the purpose of the legislation was to provide parity between state banks and national banks. In that regard, Senator D'Amato stated the following:

> [T]he bill will restore balance to the dual banking system by ensuring that neither charter operates at an unfair advantage in this new interstate environment.
>
> * * * * *
>
> [I]t would establish that a host State's law would apply to the out-of-State branches of a State-chartered bank only to the same extent that that those laws apply to the branches of out-of-State national banks located in the host State.[21]

Consequently, legislative history indicates that the purpose of Riegle-Neal II is to provide state banks parity with national banks with regard to interstate branches to the maximum extent possible.

Moreover, the very nature of Riegle-Neal II as remedial legislation supports a broad interpretation. It is a recognized canon of statutory construction that remedial legislation should be interpreted broadly to effectuate its purposes.[22] The problem that Riegle-Neal II sought to correct was accurately described by Rep. LaFalce as follows:

> Now when Congress passed the Interstate Banking and Branching bill of 1994, it did not, in my judgment, adequately anticipate the negative impact that it might have on State-chartered banks interested in branching outside their home States. However * * * it has become clear that State-chartered bank wanting to branch outside their home States are at a significant disadvantage relative national banks branching outside their home State.
>
> Why so? Well, it is due to the fact that the national bank regulator has the authority to permit national banks to conduct operations in all the States with some level of consistency. In contrast, under the existing interstate legislation State banks branching outside their home State must comply with a multitude of different State banking laws in each and every State in which they operate.
>
> So the complications of complying with so many different State laws in order to branch interstate has led many State banks to conclude * * * that it would be much easier to switch to a national Federal charter [sic].[23]

The problem then, as understood by Congress as well as the banking industry,[24] was that State banks operated at a disadvantage to national banks when they operated outside their home states. The reason is that when state banks operated in host states, they were subject to all of the laws of each host state in which they operated. National banks, however, operate in host states largely free of host state law because many host state laws are preempted for national banks. To remedy this problem Congress designed Riegle-Neal II to eliminate the disparity between the treatment of national bank branches and state bank branches with respect to the applicability of host state law.

The legislative history of Riegle-Neal II indicates that Congress wanted to provide state banks parity with national banks at least with regard to activities involving branches outside the bank's home state. As noted above, the proposed rules generally clarify that host state law is subject to preemption when an activity is conducted at a branch in the host state of an out-of-state, state bank. The proposed rules also include a definition of the phrase "activity conducted at a branch" to mean "an activity of, by, through, in, from, or substantially involving, a branch." Such an interpretation is consistent with the legislative intent as detailed above. Moreover, Congress recognized that state banks are at a disadvantage to national banks when it comes to interstate activities, and Riegle-Neal II was intended to remedy that disadvantage by providing a level playing field. The language of the

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[13] *Chapman* v. *Houston Welfare Rights Organization*, 441 U.S. 600, 608 (1979).

[14] *See, Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976).

[15] 143 Cong. Rec. H3088–89 (daily ed. May 21, 1997) (statement of Rep. Roukema).

[16] 143 Cong. Rec. H3094 (daily ed. May 21, 1997) (statement of Rep. Vento).

[17] *See, e.g.*, 143 Cong. Rec. H3094 (daily ed. May 21, 1997) (statement of Rep. Metcalf); 143 Cong. Rec. H3094–95 (daily ed. May 21, 1997) (statement of Rep. LaFalce).

[18] Riegle-Neal II was originally introduced as the Riegle-Neal Clarification Act of 1997; its name was later changed in the Senate during deliberations to the "Riegle-Neal Amendments Act of 1997".

[19] 143 Cong. Rec. H3089–93 (daily ed. May 21, 1997) (statement of Rep. Roukema).

[20] *See id.*

[21] 143 Cong. Rec. S5637 (daily ed. June 12, 1997) (statement of Sen. D'Amato).

[22] *See, Tcherepnin* v. *Knight*, 389 U.S. 332, 336 (1967).

[23] 143 Cong. Rec. H3094, 95 (daily ed. May 21, 1997) (statement of Rep. LaFalce).

[24] *See*, 143 Cong. Rec. S5637 (daily ed. June 12, 1997) (statement of Sen. D'Amato); 143 Cong. Rec. H3089–93 (daily ed. May 21, 1997) (statement of Rep. Roukema).

proposed rules carry out that intention by generally ensuring that whenever a branch of an out-of-state national bank would not be subject to a host state's law, then a branch of an out-of-state, state bank would also not be subject to that host state's law.

In addition, the language of section 24(j) indicates that it is focused on state banks that have interstate branches. The first sentence of paragraph (1) of subsection (j) describes the extent to which host state "shall apply to any branch in the host state of an out-of-state state bank." Consistent with the first sentence of paragraph (1), the second sentence provides that when host state law does not apply, the bank's home state law shall apply to such branch.[25] Therefore, the plain language of section 24(j)(1) indicates that it preempts host state law only with respect to a branch in the host state of the out-of-state, state bank.

As noted above, section 24(j)(1) provides that host state law applies to a branch in the host state of an out-of-state, state bank to the same extent that it applies to a branch in the host state of an out-of-state, national bank. Therefore, in order to determine if host state law is preempted for a branch of an out-of-state, state bank, it is necessary to first determine if host state law applies to a branch of an out-of-state, national bank. In order to determine if host state law applies to a branch of an out-of-state, national bank, the FDIC expects to consult with the OCC. This approach is similar to the consultations that the FDIC engages in currently when making determinations regarding the permissible activities of a national bank under section 24(a) of the FDI Act, 12 U.S.C. 1831a(a).

The federal authorities that the FDIC has relied upon in making its preemption decisions in the past generally have been focused on specific areas or subjects. For example, section 27 sets forth the interest rates that state banks may charge and expressly preempts contrary state law; and section 44 (12 U.S.C. 1831u) provides that the FDIC may approve a merger between insured banks with different home states notwithstanding contrary state law.[26] In contrast, section 24(j)(1) is not focused on a specific area or subject of host state law; rather it is unrestricted in its scope. As a result of its dependence on the law applicable to national banks, the scope of section 24(j)(1) includes every area or subject that does not apply to national bank branches in the host state.

In summary, section 24(j), as amended by Riegle-Neal II, preempts the application of host state laws to a branch of an out-of-state, state bank to the extent that those host state laws do not apply to a branch of an out-of-state, national bank. The scope of the preemption is not limited to particular areas or subjects, but is broader and might preempt host state laws dealing with lending, deposit-taking and other banking activities. Nevertheless, the preemption provided by section 24(j) only operates with respect to a branch in the host state of an out-of-state, state bank. By its terms section 24(j)(1), and therefore the proposed regulation, would not apply if the out-of-state, state bank does not have a branch in the host state.[27]

C. Discussion of Section 27

The Petitioner has requested that the FDIC implement section 27 by adopting rules parallel to those adopted by the OCC and the OTS. Section 27 is the statutory counterpart to section 85 of the NBA (12 U.S.C. 85) and section 4(g) of the Home Owners' Loan Act ("HOLA") (12 U.S.C. 1463(g)), which apply to national banks and savings associations, respectively. The Petitioner has correctly observed that the OCC and OTS have adopted rules implementing their respective statutory provisions but the FDIC has not issued rules implementing section 27.[28] This may create ambiguity or uncertainty about the application of the statute. Additionally, in their written statements or in their testimony at the public hearing on the Petition, certain representatives of state bank supervisors requested that the FDIC "codify" GC–10 and GC–11 and that the authority provided by section 27 be extended to operating subsidiaries of state banks.

Considering Congress' stated desire to provide state banks and insured branches of foreign banks (collectively, "insured state banks") interest rate parity with national banks and to provide certainty in this area, the FDIC's Board of Directors believes it is appropriate to grant the Petitioner's request on this portion of the Petition. The FDIC also believes that it is appropriate to issue rules concerning the application of section 27 to interstate state banks.

Because section 27, as will be more fully described below, was patterned after sections 85 and 86 of the NBA (12 U.S.C. 85, 86) to provide insured state banks competitive equality with national banks, the following background information is provided to frame the discussion of the proposed section 27 rules.

Section 30 of the NBA was enacted in 1864 to protect national banks from discriminatory state usury legislation. To accomplish its goal, the statute provided several alternative interest rates that national banks were permitted, under federal law, to charge their customers. At the time of enactment, the section also specified federal remedies for violations of the interest rates provided therein. The section was subsequently divided into two sections and renumbered, with the interest rate and remedy provisions becoming sections 85 and 86 of the NBA, respectively. In addition to the interest rates included in the statute when it was enacted, section 85 was amended in 1933 to also permit national banks to charge their customers an alternative rate of one percent above the discount rate for 90 day commercial paper in effect at the Federal Reserve bank for the Federal Reserve district where the bank is located.

Shortly after the 1864 statute was enacted, *Tiffany* v. *National Bank of Missouri*, 85 U.S. 409 (1873), gave rise to the "most favored lender doctrine." In *Tiffany*, Missouri state law limited interest rates for state banks to eight

[25] The powers exercised by state banks are naturally those granted by the individual states, and generally one state's laws have not been interpreted as preempting any other state's laws. Section 24(j)(1) would under certain circumstances make one state's laws (a host state's laws) inapplicable and another's (a home state's laws) applicable. However, section 24(j)(1) is a federal statute, and it is federal law that preempts the host state's law, not another state's laws.

[26] The FDIC has extraordinarily broad authority to preempt any state law that prohibits or materially obstructs FDIC-assisted, interstate acquisitions of BIF-insured institutions in default or in danger of default. See section 13(f)(4)(A) of the FDI Act (12 U.S.C. 1823(f)(4)(A)). *See also* section 13(k) of the FDI Act (12 U.S.C. 1823(k) (preempting state law that conflicts with the FDIC's authority to resolve certain savings associations); cf., *State of Colorado* v. *Resolution Trust Corporation*, 926 F.2d 931 (10th Cir. 1991) (Resolution Trust Corporation was authorized by FIRREA to override state branch banking laws in emergency acquisition under section 13(k) of the FDI Act); and section 11(n) of the FDI Act (12 U.S.C. 1821(n)) (preempting state law that conflicts with the FDIC's authority to transfer assets to a bridge bank); *see, e.g., NCNB Texas National Bank* v. *Cowden*, 895 F.2d 1488 (5th Cir. 1990) (Federal law, including section 11(n) of the FDI Act, authorized FDIC to transfer fiduciary appointments of a failed bank to a bridge bank and preempted conflicting Texas state laws relating to such transfers).

[27] Also, the preemption afforded state bank branches pursuant to section 24(j) and the proposed regulation only operates to the extent that national bank branches would not be subject to host state law. If a court were to rule that host state law did apply to a national bank branch in the host state, then the host state law would also apply to a state bank branch in the host state.

[28] The primary OCC rule implementing section 85 is 12 CFR 7.4001 (2005). The OTS rule implementing section 4(g) of HOLA is 12 CFR 560.110 (2005).

percent but allowed other lenders to charge up to ten percent. The United States Supreme Court construed section 85 as permitting the National Bank of Missouri to charge nine percent interest because Missouri law allowed other lenders to charge a higher interest rate than that allowed for state banks. In its decision, the Court explained that Congress intended to bestow the status of "national favorites" on national banks by protecting them from unfriendly state laws that might make it impossible for them to exist within a state. Since *Tiffany* was decided, it has become well established that national banks are generally permitted to charge the highest interest rates permitted for any competing state lender by the laws of the state where the national bank is located.

Another benefit that national banks enjoy under section 85 has become known as the "exportation doctrine." The exportation doctrine is based on the United States Supreme Court's interpretation of section 85 in *Marquette National Bank* v. *First of Omaha Service Corp.*, 439 U.S. 299 (1978). In *Marquette* the Court was presented with the question of where a national bank was "located," under section 85, for purposes of determining the appropriate state law to apply to loans the bank made to borrowers residing in another state. In construing the statute, the Court recognized that adopting an interpretation of the statute that would make the location of the bank depend on the whereabouts of each loan transaction (in *Marquette* the transactions at issue involved credit cards) would throw confusion into the complex system of modern interstate banking. The Court also observed that national banks could never be certain whether their contacts with residents of other states were sufficient to alter the bank's location for purposes of applying section 85. Instead, the Court focused on the physical location of the national bank at issue to determine where the bank was "located" for purposes of applying section 85.[29] Since *Marquette* was decided, national banks have been allowed to "export" interest rates allowed by the state where the national bank is located on loans made to out-of-state borrowers, even though those rates may be prohibited by the state laws where the borrowers reside.

Against this backdrop, in the high interest rate environment of the late 1970s, Congress became concerned that section 85 provided national banks with a competitive advantage over insured state banks, whose interest rates were constrained by state laws, and other federally insured depository institutions. To rectify the imbalance that had been created, Congress included provisions in Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA")[30] that granted all federally insured financial institutions (state banks, savings associations, and credit unions) similar interest rate authority to that provided in section 85 for national banks.

Title V of DIDMCA contained three parts that preempt state usury laws. For purposes of this discussion, however, the most relevant sections are contained in Part C. Sections 521–523 of DIDMCA amended the FDI Act (for insured state banks), the National Housing Act (for insured savings associations), and the Federal Credit Union Act (for insured credit unions), respectively. Each of these sections, as enacted, contained explicit preemptive language[31] in the statutory text, unlike under section 85, but were subject to the "opt-out" provision in section 525 of the statute.[32] These provisions are described generally in the Conference Report for the legislation as follows:

> "State usury ceilings on all loans made by federally insured depository institutions (except national banks) * * * will be permanently preempted subject to the right of affected states to override at any time * * *. In order for a state to override a federal preemption of state usury laws provided for in this Title the override proposal must explicitly and by its terms indicate that the state is overriding the preemption. Under this requirement the state law, constitutional provision, or other override proposal must specifically refer to this Act and indicate that the state intends to override the federal preemption this Act provides."[33]

Thus, the specific preemptive language contained in section 27, the accompanying legislative history, and the design and structure of Title V, Part C of DIDMCA, indicate that Congress intended section 27 to have preemptive effect, subject to the ability of state legislatures to "opt-out" of the statute's coverage by following the prescribed statutory procedures.

Regarding section 27, specifically, subsection (a) is patterned after section 85 and provides that insured state banks are permitted to charge the greater of:

- The rate prescribed for state banks under state law, if any;
- One percent more than the discount rate on 90 day commercial paper in effect at the Federal Reserve bank for the Federal Reserve district where the bank is located; and
- The rate allowed by the laws of the state, territory or district where the bank is located.[34]

In addition, the remedial nature of the enactment and the Congressional intent of providing insured state banks competitive equality with respect to interest rates are evidenced in the statutory language "[i]n order to prevent discrimination against State-chartered insured depository institutions * * * with respect to interest rates * * *"[35] Finally, subsection (b) provides virtually identical federal remedies for violating subsection (a) of section 27 as section 86 of the NBA provides for violations of section 85.

Because of the commonalities in the design of section 27 with section 85, the use of the identical language in the two sections, and the Congressional objective of providing insured state banks parity with national banks regarding interest rates, the courts and the FDIC have construed section 27 *in pari materia* with section 85.[36] In the

[29] Unlike the situation today, all the offices of the First National Bank of Omaha were in the State of Nebraska and its charter address was in Nebraska because national banks could not operate interstate branches.

[30] Pub. L. 96–221, 94 Stat. 132, 164–168 (1980).

[31] Section 27 still contains the express preemptive language "* * *" notwithstanding any State constitution or statute which is hereby *preempted* for purposes of this section" in subsection (a) and "'such State fixed rate is thereby *preempted* by the rate described in subsection (a) of this section'" in subsection (b). (Emphasis added).

[32] 12 U.S.C. 1831d note (Effective and Applicability Provisions).

[33] H.R. Rep. No. 96–842, 78–79 (1980).

[34] *FDIC Advisory Op. No. 81–3*, Letter from Frank L. Skillern, Jr., General Counsel, February 3, 1981, *reprinted in* [Transfer Binder 1988–1989] Fed. Banking L. Rep. (CCH) ¶ 81,006 ("*FDIC Advisory Op. No. 81–3*").

[35] Senator Proxmire, the Chairman of the Senate Banking Committee and a sponsor of DIDMCA, expressed a similar intent in his comments regarding H.R. 4986, which contained the language that became section 27(a) stating:

> "Title V * * * contains a provision which provides parity, or competitive equality, between national banks and State chartered depository institutions on lending limits * * * State chartered depository institutions are given the benefits of 12 U.S.C. 85 unless a State takes specific action to deny State chartered institutions that privilege."

126 Cong. Rec. S3170 (daily ed. Mar. 27, 1980) (remarks of Sen. Proxmire).

[36] *Greenwood Trust Co.* v. *Commonwealth of Massachusetts*, 971 F.2d 818, 827 (1st Cir. 1992) ("The historical record clearly requires a court to read the parallel provisions of [DIDMCA] and the [NBA] *in pari materia*. It is, after all, a general rule that when Congress borrows language from one statute and incorporates it into a second statute, the language of the two acts should be interpreted the same way. [citations omitted]. So here. What is more, when borrowing of this sort occurs, the borrowed phrases do not shed their skins like so many reinvigorated reptiles. Rather, "if a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it." [citation omitted]. Because we think it is perfectly plain that this

interest of maintaining parity with national banks, the FDIC also believes the same rationale applies with regard to section 86.

D. Explanation of the Proposed Rules

1. Section 24(j) Provisions

Paragraph (a) is a definitional section that corresponds to section 24(j)(4) and recites in paragraphs (a)(1) through (a)(3) the statutory definitions of "home state," "host state" and "out-of-state bank" found in 12 U.S.C. 1831u(g). However, the proposed rule also adds in paragraph (a)(4) a definition of the phrase "activity conducted at a branch" which is used elsewhere in the proposed rule. It defines "activity conducted at a branch" to mean "an activity of, by, through, in, from, or substantially involving, a branch." This definition is designed to give effect to Congress' intent to grant state banks full parity with national banks with respect to interstate branches. As noted above, commenters at the FDIC's public hearing stated the need for clarity with regard to the applicability of state law to branches of out-of-state, state banks. Issuing a regulation without defining the critical terms used in the regulation would provide no clarity and could lead to further confusion. Since a national bank branch gets the benefit of preemption whether or not the entire activity is performed in its branch, and since Congress intended to grant state banks full parity with national banks in this area, the definition in the proposed rule is designed to clarify that a branch of an out-of-state state bank gets the benefit of preemption whether or not the entire activity is performed in the branch.

Paragraphs (b) and (c) of the proposed rule carry out section 24(j)(1). Paragraph (b) states that except as provided in paragraph (c), host state law applies to a branch in the host state of an out-of-state, state bank. Paragraph (c) clarifies that host state law does not apply to an activity conducted at a branch in the host state of an out-of-state, state bank whenever host state law does not apply to an activity conducted at a branch in the host state of an out-of-state, national bank. Paragraph (c) further clarifies that when host state law does not apply as a result of this preemption, then the state bank's home state law applies.

Paragraph (d) of the proposed rule carries out section 24(j)(2). Paragraph (d) states generally that subject to the restrictions contained elsewhere in Part 362 of the FDIC's rules and regulations, an out-of-state, state bank that has a branch in a host state may conduct any activity at that branch that is both permissible under its home state law and either permissible for a host state bank or permissible for a branch of an out-of-state, national bank. Part 362 sets forth the prohibitions and restrictions that a state bank is subject to when it wants to conduct as principal an activity that is not permissible for a national bank. This paragraph, like the statutory provision it is based upon, preserves those prohibitions and restrictions.

Paragraph (e) is a savings provision that implements the statutory savings provision at section 24(j)(3). It basically preserves the applicability of a state bank's home state law under the interstate merger provisions of section 44 of the FDI Act (12 U.S.C. 1831u), and the applicability of Federal law to state banks and state bank branches, whether they are in the home state or the host state.

2. Section 27 Provisions

The portion of the proposed rules implementing section 27 would be contained in Part 331, which would be titled "Federal Interest Rate Authority." In addition to paralleling the existing rules implementing section 85 for national banks, as indicated in the following section-by-section analysis, some additional provisions are being proposed for clarification and to address issues specifically affecting insured state, but not national, banks.

Section 331.1 addresses the authority, purpose, and application of the rules. As indicated in the regulatory text, the rules would be issued pursuant to the FDIC's rulemaking authority in section 9(a) (Tenth) and 10(g) of the FDI Act (12 U.S.C. 1819(a) (Tenth), 1820(g)) to carry out the provisions of the FDI Act and any other law that the FDIC has the responsibility for administering or enforcing and to define the terms necessary to carry out the provisions of the FDI Act. Their purpose would be to implement Congress' explicit statutory directive in section 27 of preventing discrimination against insured state banks with regard to interest rates and to address other issues the FDIC considers appropriate to implement section 27. They would apply to a "state bank" and an "insured branch," as defined in section 3(a)(2) and 3(s)(3) (12 U.S.C. 1813(a)(2); 1813(s)(3)), respectively. Where the rules apply equally to a "state bank" and an "insured branch" the rules use the term "insured state banks" as a collective reference to the statutorily defined terms. In certain instances, however, the treatment under the rules would depend on whether the institution at issue is a "state bank" or an "insured branch." Where such a distinction is relevant, the rules use the appropriate statutorily defined term.

In addition, this section provides a rule of construction to ensure that section 27 and its implementing rules are construed in the same manner as section 85 and its implementing rules are construed by the OCC. This rule of construction is intended to inform the public of the authority and benefits provided by section 27, as well as provide insured state banks assurance that the FDIC intends that section 27 provide the same benefits to insured state banks that section 85 provides to national banks. It will also provide more practical benefits. For example, the Federal definition of "interest" contained in § 331.2(a), like 12 CFR 7.4001(a), contains a non-comprehensive list of charges that do and do not constitute "interest" for purposes of the statute. Since the OCC rule was issued, the OCC has issued interpretive letters addressing whether other charges that are not listed in the regulation, such as prepayment fees, constitute "interest" for purposes of section 85. The rule of construction should make it unnecessary in most instances for insured state banks to seek confirmation from the FDIC that its regulation and statute will be interpreted in the same manner, when such interpretive letters are issued by the OCC. Also, interpretive letters have been issued by the OCC advising that national bank operating subsidiaries can utilize section 85.[37] To provide parity, this provision will allow section 27 to be utilized by insured state bank subsidiaries to the same extent as section 85 can be utilized by subsidiaries of national banks (*i.e.*, to the extent the insured state bank subsidiaries are majority-owned by the insured state bank, subject to supervision of the state banking authority, and can only engage in activities that the bank could engage in directly).

Section 331.2 is essentially identical to section 7.4001 of the OCC's regulations interpreting section 85. The

portable soil includes prior judicial interpretations of the transplanted language, [citations omitted], [NBA] precedents must inform our interpretation of words and phrases that were lifted from the [NBA] and inserted into [DIDMCA]'s text."]; *General Counsel Op. No. 10; FDIC Advisory Op. No. 81–3.*

[37] OCC Interpretive Letter No. 954, December 16, 2002, *reprinted in* [Transfer Binder 2003–2004] Fed. Banking L. Rep. (CCH) ¶ 81–479; OCC Interpretive Letter No. 968, February 12, 2003, *reprinted in* [Transfer Binder 2003–2004] Fed. Banking L. Rep. (CCH), ¶ 81–493; OCC Interpretive Letter No. 974, July 21, 2003, *reprinted in* [Transfer Binder 2003–2004] Fed. Banking L. Rep. (CCH) ¶ 81–500.

Federal definition of "interest" in paragraph (a) was reviewed, with approval in GC–10.[38] As is the case with section 7.4001(a) of the OCC's regulation, the Federal definition in the proposed rule is intended to define "interest" for purposes of determining whether a particular charge is "interest" subject to section 27 of the FDI Act and its most favored lender and exportation rules. Also, like section 7.4001(a), the charges specified in the paragraph are non-comprehensive and other charges may be determined to constitute or not constitute "interest" for purposes of applying section 27. Paragraph (b) would formally recognize that insured state banks have the same most favored lender authority provided for national banks, which is permitted under the "rate allowed by the laws of the state, territory, or district where the bank is located" language contained in section 27. In 1981, shortly after section 27 was enacted, the FDIC's General Counsel analyzed section 27 and recognized that the most favored lender doctrine applied to insured state banks.[39] Paragraph (b) of the proposed rule is almost identical to the OCC regulatory text the FDIC's General Counsel reviewed approvingly in his the opinion. The U.S. Supreme Court, in *Marquette*, also reviewed the same regulatory text.[40] Paragraph (c), like section 7.4001(c), confirms that the Federal definition of the term "interest" does not change state law definitions of "interest" (nor how the state definition of interest is used) solely for purposes of state law. Finally, as with section 7.4001(d) for national banks, paragraph (d) of the proposed rule allows corporate borrowers and insured state banks to agree to any interest rate if the bank is located in a state whose laws deny the defense of usury to a corporate borrower.

Section 331.3 addresses where a state bank that does not maintain branches in another state, or that operates exclusively over the Internet, is "located" and where an insured U.S. branch of a foreign bank is "located." Paragraph (a) addresses state banks and determines the location issue for non-interstate state banks and Internet banks by reference to the state that issued the charter. Paragraph (b) addresses insured branches of foreign banks and adopts an analogous method for determining the location of the insured branch to that provided in paragraph (a) for state banks. Paragraph (b) is tailored more, however, to the unique nature of insured branches, which do not operate interstate branches, do not operate exclusively over the Internet, and are an office of the foreign bank that is located in the United States operating under a license from the appropriate banking authority, as opposed to a separate incorporated entity.

Section 331.4 addresses where a state bank that maintains interstate branches is "located" and the interest rate that should be applied to loans made by the home office of the bank or its out-of-state branches. These issues involve the application of section 27 in the context of Riegle-Neal I and Riegle-Neal II (collectively, the "Interstate Banking Statutes") and were analyzed in GC–11. Except as otherwise indicated, the text of the proposed rule is based upon a detailed discussion of the interplay between section 27 and the relevant provisions of Interstate Banking Statutes that was contained in GC–11;[41] therefore, the following brief description of the proposed rule should be read in context with GC–11.

Paragraph (a) of the proposed rule defines "home state" and "host state," for purposes of the section, without reference to national banks because the rule exclusively addresses the application of section 27 to a state bank. The rule would not apply to an insured branch of a foreign bank because section 24(j) (12 U.S.C. 1831a (j)), unlike section 27, contains no reference to an "insured branch." The definition of "non-ministerial functions," recognizes that the non-ministerial functions, discussed below, are factors to be considered in determining where a loan is made by an interstate state bank. The definition of the non-ministerial functions also contains a description of the three non-ministerial functions that is consistent with their description in GC–11.

Paragraph (b) recognizes that a state bank that operates interstate branches is "located," for purposes of applying section 27, in the bank's home state and in each host state where the bank maintains a branch. Paragraph (c) is based on an explanation by Senator Roth of section 111 (the usury savings clause) of Riegle-Neal I (12 U.S.C. 1811 note (Restatement of Existing Law)),[42] which he sponsored.[43] In explaining the provisions, a distinction was made between "ministerial"[44] and "non-ministerial"[45] functions, with the latter being considered the most relevant factors for determining the appropriate state's law to apply to a particular loan. Senator Roth indicated that there were considered to be three non-ministerial functions incident to the making of a loan by an interstate bank and that if those three non-ministerial functions occur in a single state, that state's interest rate provisions should be applied to the loan (this standard is contained in paragraph (c)(1) of the proposed rule). GC–11 observed, however, that the Interstate Banking Statutes did not address other situations that could occur in the interstate context, such as where the three non-

[38] GC–10 addressed the question of what charges constitute "interest" for purposes of section 27. The opinion observed that the OCC and the OTS had both adopted virtually the same Federal definition of "interest" for purposes of applying their respective statutory counterparts to section 27. The Federal definition of "interest" contained in paragraph (a) of the proposed rule is identical to the regulatory definition reviewed in GC–10. The opinion concluded that section 85 and section 27 had been and should be construed *in pari materia* because of the similarities in the two statutes and the clear congressional intent of providing competitive equality to state-chartered lending institutions by the enactment of section 27. Thus, it was the Legal Division's opinion that the term "interest," for purposes of section 27, included those charges that a national bank was authorized to charge under section 85 and the OCC regulation.

It is anticipated that GC–10 will be withdrawn if the proposed regulations are adopted because the rules embody the substance of the legal analysis and conclusions contained in the opinion.

[39] *FDIC Advisory Op. No. 81–3.*

[40] *Marquette*, at 548, *note* 26.

[41] Briefly, in GC–11, the FDIC's General Counsel addressed where an interstate state bank is "located," for purposes of applying section 27, when it operates interstate branches and determined that such a bank could be located in its home state and in each host state where it operated a branch. The General Counsel also addressed the effect of the "applicable law clause for state banks" and the "usury savings clause" enacted in Riegle-Neal I and amendments to the "applicable law clause for state banks" enacted in Riegle-Neal II, on the determination of the appropriate state law to apply to loans made by an interstate state bank, either through its home office or by a branch of the bank located in a host state. In doing so, the opinion based some of its conclusions regarding the applicability of host state law, rather than home state law, on a discussion of the intended effect of the "usury savings clause" by Senator Roth, the sponsor of the amendment. Finally, the opinion addressed other situations that were not addressed by the Interstate Banking Statutes, which the OCC has also addressed for national banks in OCC Interpretive Letter 822, and concluded that similar analysis and treatment should apply to interstate state banks in the context of section 27.

[42] The usury savings clause provides, in pertinent part:

No provision of this title and no amendment made by this title to any other provision of law shall be construed as affecting in any way—

* * * * *

(3) The applicability of [section 85] or [section 1831d] of the Federal Deposit Insurance Act.

[43] The discussion appears at 140 Cong. Rec. S12789–12790 (daily ed. Sept. 13, 1994)(Remarks of Senator Roth).

[44] These include providing loan applications, assembling documents, providing a location for returning documents necessary for making a loan, providing account information, and receiving payments.

[45] These include the approval of credit (*i.e.*, decision to extend credit), the extension of credit itself, and the disbursal of proceeds of the loan.

ministerial functions occur in different states or where some of the non-ministerial functions occur in an office that is not considered to be the home office or a branch of the bank. In these instances, as reflected in GC–11 and paragraph (c)(2) of the proposed rule, home state rates may be used. Alternatively, as reflected in GC–11 and paragraph (c)(3) of the proposed rule, host state interest rates may be applied where a non-ministerial function occurs at a branch in a host state, if based on an assessment of all of the facts and circumstances, the loan has a clear nexus to the host state.

An issue that is not addressed in the proposed rules is whether an interstate state bank should be required to disclose to its borrowers that the interest to be charged on a loan is governed by applicable federal law and the law of the relevant state which will govern the transaction. Such a disclosure was discussed in GC–11, to prevent uncertainty regarding which state's interest rate provisions apply to loans made by interstate state banks, and was also mentioned in the OCC's corresponding Interpretive Letter 822.[46] The FDIC is interested in comments concerning whether this issue also should be addressed in section 331.4, as well as any benefits or burdens that would result from requiring such disclosure.

Section 331.5 addresses the effect of a state's election to exercise the authority provided by section 525 of DIDMCA (12 U.S.C. 1831d note (Effective and Applicability Provisions) to "opt-out" of the federal authority provided by section 27.[47] As proposed, section 27 would not apply to an insured state bank or an interstate branch of a state bank that is situated in a state that has opted-out of the coverage of section 27. The FDIC believes that Iowa, Wisconsin and Puerto Rico are the only jurisdictions that currently use this authority.[48] The FDIC welcomes additional information concerning these states or any other states that may have elected to opt-out under section 525.

Since a state may elect to opt-out under section 525 at any time, the FDIC is also interested in comments addressing whether it would be beneficial to include a list of the states that have opted-out in the text of the rule. The FDIC recognizes that this would require revision of the rule whenever a state repeals its existing opt-out or enacts opt-out legislation regarding section 27 and that, due to the time involved in identifying such information and revising the regulation, this may result in the rule being inaccurate for a period of time. Thus, if commenters would like to have this information incorporated in the rule, the FDIC is also interested in comments or suggestions addressing how to assure the accuracy of the state information that would be contained therein.

IV. Request for Comment

The FDIC is interested in comments on all aspects of the proposed rules, particularly responses to the specific questions posed in the above discussion of the proposed rule. In particular, we are interested in specific comments on whether the proposed rules would be either helpful or harmful to the industry and the public and, if so, how.

V. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

VI. Regulatory Flexibility Act

The FDIC certifies that this proposed rule would not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). The proposed rule would clarify sections 24(j) and 27 of the FDI Act by indicating the state law that would apply in certain interstate banking activities conducted by state-chartered banks. The proposed rule would impose no new requirements or burdens on insured depository institutions. Also, it would not result in any adverse economic impact. Accordingly, the Act's requirements relating to an initial regulatory flexibility analysis is not applicable.

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

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects

12 CFR Part 331

Banks, banking, Deposits, Foreign banking, Interest rates.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Investments, Reporting and recordkeeping requirements.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to amend 12 CFR chapter III as follows:

1. Part 331 is added to read as follows:

PART 331—FEDERAL INTEREST RATE AUTHORITY

Sec.

Authority: 12 U.S.C. 1819(a) (Tenth), 1820(g), 1831d, 1831d note.

§ 331.1 Authority, purpose and application.

(a) *Authority.* The regulations in this part are issued by the FDIC under the authority contained in sections 9(a)(Tenth) and 10(g) of the Federal Deposit Insurance Act (12 U.S.C. 1819(a) (Tenth), 1820(g)) to implement section 27 of the FDI Act (12 U.S.C. 1831d) and related provisions of the Depository Institution Deregulation and Monetary Control Act of 1980, Public Law 96–221, 94 Stat. 132 (1980) ("DIDMCA").

(b) *Purpose.* Section 27 of the FDI Act was enacted to prevent discrimination against insured state-chartered banks

[46] OCC Interpretive Letter 822, February 17, 1998, *reprinted in* [Transfer Binder 1997–1998] Fed. Banking L. Rep. (CCH) ¶ 81–265.

[47] Section 525 states:

The amendments made by sections 521 through 523 of this title shall apply only with respect to loans made in any State during the period beginning on April 1, 1980, and ending on the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the amendments made by such sections to apply with respect to loans made in such State, except that such amendments shall apply to a loan made on or after the date such law is adopted or such certification is made if such loan is made pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.

[48] Act of May 10, 1980, ch. 1156, section 32, 1980 *Iowa Acts* 537, 547–48 (not codified); Act, ch. 45, section 50, 1981 *Wis. Laws* 586 (not codified); 10 *P.R. Laws Ann.* section 9981 (2002). Some states, such as Nebraska, Massachusetts, Colorado, Maine and North Carolina, opted out for a number of years, but either rescinded their respective opt-out statutes or allowed them to expire.

and insured U.S. branches of foreign banks with regard to interest rates by providing similar interest rate authority to that permitted for national banks under section 85 of the National Bank Act (12 U.S.C. 85). To maintain parity with national banks in this area, the rules contained in this Part clarify that state banks have regulatory authority that is parallel to the authority provided to national banks under regulations issued by the Office of the Comptroller of the Currency implementing section 85. Other issues the FDIC considers appropriate to implement section 27 are also addressed in the rules.

(c) *Application.* This Part applies to a "state bank" and an "insured branch," as those terms are defined in section 3(a)(2) and 3(s)(3) of the FDI Act (12 U.S.C. 1813(a)(2); 1813(s)(3)), respectively. The reference to "insured state banks" in this Part, is a collective reference to "state banks" and "insured branches." To maintain parity with national banks under section 85 of the National Bank Act, the FDIC will construe section 27 of the FDI Act and the regulations in this Part in the same manner as section 85 and its implementing regulations are construed by the Office of the Comptroller of the Currency.

§ 331.2 Interest permitted for insured state banks.

(a) *Definition.* The term "interest", as used in 12 U.S.C. 1831d, includes any payment compensating a creditor or prospective creditor for an extension of credit, making available a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: Numerical periodic rates, late fees, creditor-imposed not sufficient funds (NSF) fees charged when a borrower tenders payment on a debt with a check drawn on insufficient funds, overlimit fees, annual fees, cash advance fees, and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports.

(b) *Most favored lender.* An insured state bank located in a state may charge interest at the maximum rate permitted to any state-chartered or licensed lending institution by the law of that state. If state law permits different interest charges on specified classes of loans, an insured state bank making such loans is subject only to the provisions of state law relating to that class of loans that are material to the determination of the permitted interest. For example, an insured state bank may lawfully charge the highest rate permitted to be charged by a state-licensed small loan company, without being so licensed, but subject to state law limitations on the size of loans made by small loan companies.

(c) *Effect on state definitions of interest.* The Federal definition of the term "interest" in paragraph (a) of this section does not change how interest is defined by the individual states (nor how the state definition of interest is used) solely for purposes of state law. For example, if late fees are not "interest" under state law where an insured state bank is located but state law permits its most favored lender to charge late fees, then an insured state bank located in that state may charge late fees to its intrastate customers. The insured state bank may also charge late fees to its interstate customers because the fees are interest under the Federal definition of interest and an allowable charge under state law where the insured state bank is located. However, the late fees would not be treated as interest for purposes of evaluating compliance with state usury limitations because state law excludes late fees when calculating the maximum interest that lending institutions may charge under those limitations.

(d) *Corporate borrowers.* An insured state bank located in a state whose state law denies the defense of usury to a corporate borrower may charge a corporate borrower any rate of interest agreed upon by the corporate borrower.

§ 331.3 Location of non-interstate state bank or insured branch.

(a) *State bank.* A state bank that does not maintain interstate branches or operates exclusively through the Internet is located, for purposes of applying 12 U.S.C. 1831d, in the state that issued the charter.

(b) *Insured branch.* An insured branch of a foreign bank is located, for purposes of applying 12 U.S.C. 1831d, in the state that issued the license.

§ 331.4 Location and interest rate for interstate state bank.

(a) *Definitions.* For purposes this section, the following terms have the following meanings:

(1) *Home state* means the state that chartered a state bank.

(2) *Host state* means a state, other than the home state of a state bank, in which the bank maintains a branch.

(3) *Non-ministerial functions* are factors to be considered in determining where a loan is made by an interstate state bank. The non-ministerial functions are:

(i) *Approval.* The decision to extend credit occurs where the person is located who is charged with making the final judgment of approval or denial of credit.

(ii) *Disbursal.* The location where the actual physical disbursement of the proceeds of the loan occurs, as opposed to the delivery of previously disbursed funds.

(iii) *Extension of credit.* The site from which the first communication of final approval of the loan occurs.

(b) *Location.* An interstate state bank is located, for purposes of applying 12 U.S.C. 1831d, in the home state of the state bank and in each host state where the state bank maintains a branch.

(c) *Location in more than one state.* If a state bank is located in more than one state, the appropriate interest rate:

(1) Will be determined by reference to the laws of the state where all of the non-ministerial functions occur;

(2) May be determined by reference to the laws of the home state of the state bank, where the non-ministerial functions occur in branches located in different host states or any of the non-ministerial functions occur in a state where the state bank does not maintain a branch; or

(3) May be determined by reference to the laws of a host state where a non-ministerial function occurs if, based on an assessment of all of the relevant facts and circumstances, the loan has a clear nexus to that host state.

§ 331.5 Effect of opt-out.

12 U.S.C. 1831d does not apply to loans made to customers by an insured state bank or an interstate branch of a state bank situated in a state that elects to opt-out of the coverage of 12 U.S.C. 1831d, pursuant to section 525 of DIDMCA (12 U.S.C. 1831d note (Effective and Applicability Provisions).

PART 362—ACTIVITIES OF INSURED BANKS AND INSURED SAVINGS ASSOCIATIONS

2. Revise the authority citation for part 362 to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819(a)(Tenth), 1820(g), 1828(j), 1828 (m), 1828a, 1831a, 1831d, 1831e, 1831w, 1843(*l*).

3. Add new subpart F to read as follows:

Subpart F—Preemption

§ 362.19 Applicability of State Law.

(a) *Definitions.* For purposes of this section the following definitions apply.

(1) The term "*home State*" means (i) with respect to a State bank, the State

by which the bank is chartered, and (ii) with respect to a national bank, the State in which the main office of the bank is located.

(2) The term "*host State*" means with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(3) The term "*out-of-State bank*" means, with respect to any State, a bank whose home State is another State.

(4) The phrase "*activity conducted at a branch*" means an activity of, by, through, in, from, or substantially involving, a branch.

(b) Except as provided in paragraph (c) of this section, the laws of a host State apply to an activity conducted at a branch in the host State by an out-of-State, State bank.

(c) A host State law does not apply to an activity conducted at a branch in the host State of an out-of-State, State bank to the same extent that a Federal court or the Office of the Comptroller of the Currency has determined in writing that the particular host State law does not apply to an activity conducted at a branch in the host State of an out-of-State, national bank. If a particular host State law does not apply to such activity of an out-of-State, State bank because of the preceding sentence, the home State law of the out-of-State, State bank applies.

(d) Subject to the restrictions of subparts A through E of this part 362, an out-of-State, State bank that has a branch in a host State may conduct any activity at such branch that is permissible under its home State law, if it is either

(1) Permissible for a bank chartered by the host State, or

(2) Permissible for a branch in the host State of an out-of-State, national bank.

(e) Savings provision. No provision of this section shall be construed as affecting the applicability of—

(1) Any State law of any home State under subsection (b), (c), or (d) of 12 U.S.C. 1831u; or

(2) Federal law to State banks and State bank branches in the home State or the host State.

Dated at Washington DC, this 6th day of October, 2005.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–20582 Filed 10–13–05; 8:45 am]

BILLING CODE 6714–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

All Terrain Vehicles; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering whether there may be unreasonable risks of injury and death associated with some all terrain vehicles ("ATVs"). The Commission is considering what actions, both regulatory and non-regulatory, it could take to reduce ATV-related deaths and injuries. As described below, the Commission has had extensive involvement with ATVs since 1984. However, in recent years there has been a dramatic increase in both the numbers of ATVs in use and the numbers of ATV-related deaths and injuries. According to the Commission's 2004 annual report of ATV deaths and injuries (the most recent annual report issued by the Commission), on December 31, 2004, the Commission had reports of 6,494 ATV-related deaths that have occurred since 1982. Of these, 2,019 (31 percent of the total) were under age 16, and 845 (13 percent of the total) were under age 12. The 2004 annual report states that in 2004 alone, an estimated 129,500 four-wheel ATV-related injuries were treated in hospital emergency rooms nationwide. While this represents an increase in injuries in 2004 compared with 2003, the total number of four-wheel ATVs in use in the United States has increased and the estimated risk of injury per 10,000 four-wheel ATVs in use remained essentially level over the previous year.

This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding under the Consumer Product Safety Act ("CPSA") and the Federal Hazardous Substances Act ("FHSA").[1] However, the notice discusses a broad range of regulatory and non-regulatory alternatives that could be used to reduce ATV-related deaths and injuries. The Commission invites public comment on these alternatives and any other approaches that could reduce ATV-related deaths and injuries. The Commission also solicits written comments concerning the risks of injury associated with ATVs, ways these risks could be addressed, and the economic impacts of the various alternatives discussed. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury described in this ANPR.

DATES: Written comments and submissions in response to this ANPR must be received by December 13, 2005.

ADDRESSES: Comments should be e-mailed to *cpsc-os@cpsc.gov*. Comments should be captioned "ATV ANPR." Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–7923. Comments also may be filed by facsimile to (301) 504–0127.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leland, Project Manager, ATV Safety Review, Directorate for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7706 or e-mail: *eleland@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission's involvement with ATVs is longstanding. ATVs first appeared on the market in the early 1970's. After a marked increase in their sales and in ATV-related incidents, the Commission became concerned about their safety in the early 1980's. On May 31, 1985, the Commission published an ANPR stating the Commission's safety concerns and outlining a range of options the Commission was considering to address ATV-related hazards. 50 FR 23139. At that time, the Commission had reports of 161 ATV-related fatalities which had occurred between January 1982 and April 1985, and the estimated number of emergency room treated injuries associated with ATVs was 66,956 in 1984. The majority of ATVs in use at that time were three-wheel models. One of the options mentioned in the ANPR was proceeding under section 12 of the CPSA to declare ATVs an imminently hazardous consumer product, see 15 U.S.C. 2061(b)(1). In 1987, the Commission filed such a lawsuit against the five companies that were major ATV distributors at that time. The lawsuit was settled by Consent Decrees filed on

[1] Chairman Hal Stratton and Commissioners Thomas H. Moore and Nancy A. Nord issued statements, copies of which are available from the Commission's Office of the Secretary or from the Commission's Web site, *http://www.cpsc.gov*.

April 28, 1988 that were effective for ten years.[2]

1. The Consent Decrees

The Consent Decrees included a broad range of provisions. In them, the distributors agreed to: (1) Halt the distribution of three-wheel ATVs, (2) attempt "in good faith" to devise a voluntary performance standard satisfactory to the Commission; (3) label ATVs with four types of warnings, the language and format of which were specified in the Consent Decrees; (4) supplement existing owners manuals with safety text and illustrations specified in the Consent Decrees and to prepare new owners manuals with specified safety information; (5) provide point of purchase safety materials meeting guidelines specified by the Consent Decrees, including hangtags, a safety video, a safety alert for dissemination to all purchasers stating the number of ATV deaths (to be updated annually), a 4 foot by 4 foot safety poster for dealers to display stating the number of ATV-associated fatalities (updated annually); (6) offer a rider training course to ATV purchasers and members of their immediate families at no cost; (7) run prime-time television spots on ATV safety; (8) include safety messages in all subsequent advertising and promotional materials and (9) conduct a nationwide ATV safety public awareness and media campaign. The distributors also agreed in the Consent Decrees that they would "represent affirmatively" that ATVs with engine sizes between 70 and 90 cc should be used only by those age 12 and older, and that ATVs with engine sizes larger than 90 cc should be used only by those 16 and older. Because distributors did not sell their products directly to consumers but through dealerships (which were not parties to the Consent Decrees), distributors agreed to "use their best efforts to reasonably assure" that ATVs would "not be purchased by or for the use of" anyone who did not meet the age restrictions. While the Consent Decrees were in effect, the distributors entered into agreements with the Commission and the Department of Justice agreeing to monitor their dealers to determine whether they were complying with the age recommendations and to terminate the franchises of dealers who repeatedly failed to provide the appropriate age recommendations.

2. The Voluntary Standard

Industry had begun work on a voluntary standard before the Consent Decrees were in place. Distributors that were parties to the Decrees agreed to work in good faith to develop a voluntary standard that was satisfactory to the Commission within four months of the signing of the Consent Decrees. The five companies, working through the Specialty Vehicle Institute of America ("SVIA"), submitted a standard for approval as an American National Standards Institute ("ANSI") standard in December 1988. On January 13, 1989, the Commission published a notice in the **Federal Register** concluding that the voluntary standard was "satisfactory" to the Commission.[3] 54 FR 1407. The standard, known as ANSI/SVIA 1–2001, *The American National Standard for Four Wheel All-Terrain Vehicles—Equipment, Configuration, and Performance Requirements*, was first published in 1990, and was revised in 2001. The ANSI standard has requirements for equipment, configuration, and performance of four-wheel ATVs. It does not contain any provisions concerning labeling, owners manuals or other information to be provided to the purchaser because such requirements were stated in the Consent Decrees that were in effect when the ANSI standard was developed. Provisions of the ANSI standard are discussed in more detail in section D.1 below.

3. ATV Action Plans

The Consent Decrees expired in April 1998. The Commission entered into "Action Plans" (also known as letters of undertaking) with seven major ATV distributors (the five who had been parties to the Consent Decrees, plus Arctic Cat, Inc. and Bombardier, Inc.) *See* 63 FR 48199 (summarizing Action Plans). Except for Bombardier's, all of the Action Plans took effect in April 1998 at the expiration of the Consent Decrees. (Bombardier's took effect in 1999 when the company began selling ATVs.) The substance of the Action Plans is described in letters of undertaking submitted by each of the companies.[4] The letters are not identical, but the companies agreed to take substantially similar actions.

Generally, under the Action Plans the companies agreed to continue many of the actions the Consent Decrees had required concerning the age recommendations, point of sale information (i.e., warning labels, owners manuals, hang tags, safety alerts, and safety video), advertising and promotional materials, training, and stopping distribution of three-wheel ATVs. The companies also agreed to implement an information/education program directed primarily at discouraging children under 16 from operating adult-size ATVs. The Action Plans are discussed in greater detail in section D.2 below.

4. Termination of Previous Rulemaking

As mentioned above, the Commission issued an ANPR concerning ATVs in 1985. However, the Commission chose to pursue legal action under section 12 to address ATV deaths and injuries rather than taking regulatory action. In 1991, the Commission terminated the rulemaking proceeding it had started with the 1985 ANPR. 56 FR 47166. At the time of the rulemaking termination, the Consent Decrees were in effect, the five ATV distributors had agreed to conduct monitoring of dealers' compliance with the Consent Decrees' provisions, and ATV-related injuries and deaths were declining. The termination notice stated that the ATV-related injury rate for the general population (per ATV) had dropped by about 50 percent between 1985 and 1989, and ATV-related fatalities had declined from an estimated 347 in 1986 to about 258 in 1989. *Id.* At 47170. The Commission concluded that under the circumstances present at that time, a rule was not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with ATVs.

The Commission's termination of its rulemaking proceeding was challenged by Consumer Federation of America ("CFA") and U.S. PIRG arguing that withdrawing the ANPR rather than pursuing a ban on the sale of new adult-size ATVs for use by children under 16 was arbitrary and capricious. The court upheld the Commission's decision. *Consumer Federation Of America* v. *Consumer Product Safety Commission*, 990 F.2d 1298 (D.C. Cir. 1993). The court noted that it was reasonable for the Commission to determine the

[2] The five distributors were American Honda Motor Co., Inc., American Suzuki Motor Corp., Polaris Industries, L.P., Yamaha Motor Corp., USA, and Kawasaki Motors Corp., USA. In 1996, Arctic Cat, Inc. began manufacturing ATVs and entered into an Agreement and Action Plan with the Commission in which the company agreed to take substantially the same actions as required under the Consent Decrees.

[3] In the FR notice, the Commission noted that it "specifically reserved its rights under the consent decrees to institute certain enforcement or rulemaking proceedings in the future." 54 FR 1407.

[4] These documents are available on CPSC's Web site at *http://www.cpsc.gov/library/foio/foia98/fedreg/honda.pdf; http://www.cpsc.gov/library/foia/foia98/fedreg/suzuki.pdf; http://www.cpsc.gov/library/foio/foia98/fedreg/kawasaki.pdf; http://www.cpsc.gov/library/foio/foio98/fedreg/polaris; http://www.cpsc.gov/library/foia/foio98/fedreg/yamaha.pdf; http://www.cpsc.gov/library/foia/foia98/fedred/arctic.pdf; and http://www.cpsc.gov/library/foio/foia99/pubcom/bobord.pdf.*

effectiveness of the Consent Decrees and monitoring activities before considering whether additional action would be necessary. *Id.* at 1306.

5. CFA's Petition and the Chairman's Memo

In August 2002, CFA and eight other groups requested that the Commission take several actions regarding ATVs. CPSC docketed the portion of the request that met the Commission's docketing requirements in 16 CFR 1051.5(a). That request asked for a rule banning the sale of adult-size four wheel ATVs for the use of children under 16 years old. The staff prepared a briefing package analyzing the petition which was provided to the Commission on February 2, 2005 (available on CPSC's Web site in four parts beginning with *http://www.cpsc.gov/library/foia/foia05/brief/atvpt1.pdf*). The staff concluded that, given the Commission's lack of authority to regulate the use of ATVs and the difficulties of enforcing a sales ban, the requested sales ban would likely have little impact on reducing ATV-related deaths and injuries.

On June 8, 2005, Chairman Hal Stratton delivered a memorandum to the staff asking the staff to review all ATV safety actions and make recommendations on a number of issues. The memo directed the staff to consider whether: (1) The current ATV voluntary standards are adequate in light of trends in ATV-related deaths and injuries; (2) the current ATV voluntary standards or other standards pertaining to ATVs should be adopted as mandatory standards by the Commission; and (3) other actions, including rulemaking, should be taken to enhance ATV safety. The memo also identified several specific issues for the staff to review, namely: (1) Pre-sale training/certification requirements; (2) enhanced warning labels; (3) formal notification of safety rules by dealers to buyers; (4) the addition of a youth ATV model appropriate for 14-year olds; (5) written notification of child injury data at the time of sale; (6) separate standards for vehicles designed for two riders; and (7) performance safety standards. The memo directed the staff to give particular attention to improving the safety of young riders.

The Commission is issuing this ANPR as part of the review requested by the Chairman. The staff will consider the general and specific issues highlighted in the Chairman's memo, as well as any other approaches that could reduce ATV-related deaths and injuries. This ANPR is issued under the authority of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.*

B. The Product

ATVs are motorized vehicles having broad, low pressure tires and are designed for off-road use. Originally, three-wheel ATVs predominated. However, since the Consent Decrees, only four-wheel ATVs have been marketed and sold in the United States (although some three-wheel ATVs are still in use).

Sales of ATVs have increased dramatically in recent years. Between 1996 and 2003 annual sales increased each year for a cumulative increase of about 150 percent to about 800,000 units in 2003. Annual rates of increase in sales may be slowing, but sales during 2000–2002 were still at record levels compared to the mid-1980s when sales were about 500,000 units annually. There also appears to be a trend toward producing larger ATVs. The engine sizes of ATVs currently for sale range from 40 cc to 760 cc, with at least one company planning to have an 800 cc ATV in its 2006 product line. The 1985 ANPR stated that typical ATVs at that time had engines between 50 cc and 250 cc. In the mid-1990s, new entrants began developing and marketing youth ATV models. Sales of youth models have continued to increase, and in 2002, an estimated 80,000 youth ATVs (or about 10–12 percent of all new ATVs) were sold.

The staff identified 32 domestic and foreign manufacturers of model year 2003 ATVs. About half of these manufacturers have business operations in the U.S. Some of these produce ATVs in the U.S. while others produce ATVs abroad but have a U.S. subsidiary or affiliate that distributes them in the U.S. The remaining 16 of the 32 manufacturers are foreign manufacturers that export ATVs to independently owned American importers who distribute the ATVs under the name of the foreign manufacturer, under their own name or under the name of a private labeler, or who deal directly with the ultimate consumer. Many of these foreign manufacturers entered the U.S. market in the past five years, originally selling only a youth ATV model. They are now beginning to market and sell adult ATVs as well.

Most ATVs are sold through manufacturers' networks of dealers. About 5000 dealers are affiliated with the major ATV distributors. ATVs are also sold in such places as lawn and garden shops, boat and marine product dealerships and farm equipment dealerships. ATVs, particularly those manufactured by the newer foreign entrants, are also now sold on various Web sites, through "big box" retailers, and in some instances directly to consumers by the manufacturer.

C. The Risk of Injury

The most recent annual report of ATV deaths and injuries that the Commission has issued is the 2004 Annual Report (issued in September 2005). According to that report, the Commission had reports of 6,494 ATV-related deaths that have occurred since 1982. Of these, 2,019 (31 percent of the total) were under 16 years of age and 845 (13 percent of the total) were under 12 years of age. According to the 2004 Annual Report, 569 ATV-related deaths were reported to the Commission for 2003. Deaths reported to the Commission represent a minimum count of ATV-related deaths. To account for ATV-related deaths that are not reported to the Commission, the staff calculates an estimated number of ATV deaths. The most recent estimate of ATV-related deaths for 2003 is 740.

CPSC collects information on hospital emergency room treated injuries. The estimated number of ATV-related injuries treated in hospital emergency rooms in 2004 was 136,100. This is an increase of about eight percent over the 2003 estimate. The estimated number of injuries to children under 16 in 2004 was 44,700 (about 33 percent of the total estimated injuries for 2004).

The staff also estimates the risk of injury and the risk of death per 10,000 ATVs in use. According to the 2004 Annual Report, the estimated risk of injury for four-wheel ATVs for 2004 was 187.9 injuries per 10,000 four-wheel ATVs in use. A recent high in the estimated risk of injury occurred at 200.9 in 2001. The estimated risk of death for four-wheel ATVs in 2003 was 1.1 deaths per 10,000 four-wheel ATVs in use. In 1999, the earliest comparable year due to changes in data collection, the estimated risk of death was 1.4 deaths per 10,000 four-wheel ATVs in use.

Based on injury and exposure studies conducted in 1997 and, most recently, in 2001, the estimated number of ATV-related injuries treated in hospital emergency rooms rose from 52,800 to 110,100 (a 109 percent increase). Injuries to children under 16 rose 60 percent. During these years, the estimated number of ATV drivers rose from 12 to 16.3 million (a 36 percent increase); the estimated number of driving hours rose from 1,580 to 2,360 million (a 50 percent increase); and the estimated number of ATVs rose from 4 to 5.6 million (a 40 percent increase). The chief finding of the 2001 Report

was that increases in the estimated numbers of drivers, driving hours and vehicles did not account for all of the increase in the estimated number of ATV injuries.

D. Current Safety Efforts

1. ANSI Standard

The ANSI voluntary standard for ATVs, ANSI/SVIA 1–2001, was first published in 1990 and was revised in 2001. The ANSI standard defines an ATV as a vehicle designed to travel on four low pressure tires, having a seat designed to be straddled by the operator, having handlebars for steering control, and intended for use by a single operator. Under the standard, ATVs are divided into four categories: Category G for general recreational and utility use; Category S for recreational use by experienced operators; Category U intended primarily for utility use; and Category Y intended for operators under 16 years old. The Category Y is further subdivided into Y–6 for children age 6 and older and Y–12 for children age 12 and older.

General requirements cover service and parking brakes, mechanical suspension, clutch and gearshift controls, engine and fuel cutoff devices, throttle controls, lighting, tires, operator foot environment, electromagnetic compatibility, and sound level limits. Vehicle performance requirements are specified for service and parking brake operation, and pitch stability. In addition, for youth ATVs, there are requirements for maximum speed capability and for speed limiting devices. ATVs in the Y–6 category must have a speed limit capability of 10 mph and a maximum unrestricted speed of 15 mph. ATVs in the Y–12 category must have speed limit capability of 15 mph and a maximum unrestricted speed of 30 mph. The ANSI standard does not contain any labeling requirements or other provisions concerning safety information.

The major ATV distributors have indicated that they comply with the voluntary standard. However, the staff has not conducted any studies to determine the level of compliance by all ATV companies. The degree to which all ATV companies comply with the voluntary standard's provisions is an issue that the staff will examine as it pursues its review. Additionally, the adequacy of the voluntary standard is an issue that the staff will examine in the course of its review.

2. ATV Action Plans

As explained above, the ATV Action Plans are voluntary agreements that the seven major ATV distributors have with the Commission. Through their Action Plans, these distributors agreed to continue many of the actions that the Consent Decrees required. Specifically, the companies agreed to continue to (1) abide by the age recommendations in the Consent Decrees and to monitor their dealers for compliance;[5] (2) use the warning labels previously approved by the Commission on all ATVs;[6] (3) use owners manuals that include the substantive informational content required under the Consent Decrees; (4) use advertising and promotional materials that conform to the advertising guidelines in the Consent Decrees; (5) affix hang tags to their ATVs that provide the same substantive safety messages as required under the Consent Decrees; (6) provide to dealers, for dissemination to purchasers, information that contains the same substantive safety messages as the ATV safety alerts required under the Consent Decrees (except for Honda); (7) provide each purchaser with a safety video with the same substantive safety messages as required under the Consent Decrees; (8) offer free hands-on ATV training to ATV purchasers and their immediate families;[7] and (9) not market or sell three-wheel ATVs. Some of these actions are discussed in greater detail below.

Dealer Monitoring. The Consent Decrees were signed by the five major ATV distributors of the time, but they did not bind ATV dealers. The distributors agreed to use their best efforts to accomplish the goals of the age recommendations through their retail dealers or other representatives selling ATVs. To gauge the level of dealer compliance with the age recommendations, the Commission conducted two surveys. *See* 56 FR 47166. In December 1988, the Commission surveyed all dealers in Virginia and found that approximately 70 percent were making age recommendations that were inconsistent with provisions of the Consent Decrees. In June and July of 1989, the Commission conducted a nationwide statistical survey using a sample of 227 ATV dealers to determine the level of compliance with the age recommendations. This survey found that about 56 percent of dealers surveyed were not complying with the age recommendations. The Commission and the Justice Department negotiated with the distributors, and the distributors agreed to monitor their dealers and take steps to terminate the franchises of dealers who repeatedly failed to comply with the age recommendations. Under the Action Plans, ATV distributors continue to monitor their dealers. The Commission staff has continued to conduct monitoring as well.

From 2000–2003 the seven ATV manufacturers with Action Plans conducted undercover monitoring and reported their results to CPSC. During this time period, they reported that in 76 percent of the undercover monitoring visits, dealers were in compliance with the age recommendations. During this 2000–2003 period CPSC staff or its contractors also conducted monitoring. Of the dealers visited, 60 percent were in compliance with the age recommendations. The 2004 undercover monitoring results show a compliance rate of 70 percent of dealers visited. Note, however, that the monitoring is not a statistical sample and may not be representative of a nationwide level of compliance.

Training. The Commission has consistently taken the position that ATV training is an important aspect of safety. The Commission's studies have shown that ATV drivers who receive formal ATV training have a lower risk of injury than those who do not receive formal training. Yet, according to the 2001 exposure study, only 7 percent of all ATV drivers had received formal training.

Under the Action Plans, manufacturers agreed to continue to provide free hands-on training to purchasers and family members as had been required under the Consent Decrees. Most of these companies provide training through the ATV Safety Institute ("ASI"). Usually within 48 hours of purchase, ASI contacts the new owner (and family) to give them information about available rider training courses and encouraging them to enroll. Courses are available at nearly 1,000 locations in the U.S.

Warning Labels. The Consent Decrees required that manufacturers affix four warning labels to ATVs: (1) A general warning label,[8] (2) a warning label stating that operating the ATV if you are under the appropriate age (12 or 16

[5] Arctic Cat had established a minimum age of 16 for its ATVs with engine size greater than 90 cc up to 350 cc, and a minimum age of 18 for its ATVs with an engine size greater than 350 cc.

[6] The labels were revised in the mid-1990s based on recommendations of the Commission's Human Factors staff.

[7] The companies also agreed to offer incentives for training to first time ATV purchasers without prior training (most offer $100 cash, while Honda offers entrance into a contest for prizes).

[8] This label was required to state that the vehicle can be hazardous to operate and that "severe injury or death" can result unless specified instructions are followed (such as having proper training, wearing a helmet etc.).

depending on the ATV) increases the chance of injury or death, (3) a warning label stating that riding as a passenger can cause the ATV to go out of control, and (4) a warning label (or labels) warning against use of improper air pressure in the ATV's tires and against overloading. The Consent Decrees specified the precise wording, format and location for these warnings based on information and advice from CPSC staff. In the mid-1990s, the content of the warning labels was revised, in consultation with CPSC staff. In the Action Plans the companies agreed to continue using the warning labels required under the Consent Decrees (as modified by the mid-90s revisions). As part of its review, the staff will examine the adequacy of the Action Plans.

3. Corrective Actions

Under section 15 of the CPSA, if the Commission determines that a product presents a substantial product hazard the Commission may order the manufacturer, distributor or retailer of the product to repair the problem in the product, replace the product, or refund the purchase price of the product. 15 U.S.C. 2064(d). Most corrective actions (often called recalls) are undertaken voluntarily by the manufacturer of a product. There have been numerous recalls of ATVs covering a variety of mechanical problems—about 50 between July 2001 and August 2005 (see Commission's Web site *http://www.cpsc.gov*).

E. Regulatory and Non-Regulatory Alternatives To Address the Risks of Injury

The Chairman's memo directed the staff to conduct a broad review of existing ATV safety measures and make recommendations to reduce ATV-related deaths and injuries. The memo requested the staff to consider rulemaking as well as other activities. Following is a discussion of options available to the Commission and issues raised by the Chairman's memo.

1. *Rulemaking.* As directed by the Chairman's memo, the staff will examine the possibility of rulemaking to make aspects of the voluntary standard or of the Voluntary Action Plans mandatory requirements, or to issue other mandatory requirements.

Under section 7 of the CPSA, the Commission has the authority to issue a consumer product safety standard consisting of performance requirements for the product and/or requirements that the product be marked with or accompanied by warnings or instructions when such requirements are reasonably necessary to prevent or reduce an unreasonable risk of injury associated with the product. Such a rule could also include a certification requirement as authorized by section 14 of the CPSA.

Under section 8 of the CPSA, 15 U.S.C. 2057, the Commission has the authority to act if the Commission finds that no feasible consumer product safety rule would adequately protect the public from an unreasonable risk of injury associated with ATVs. Additionally, under section 12 of the CPSA, 15 U.S.C. 2061, the Commission has authority to file an action in Federal district court against an imminently hazardous consumer product, against the manufacturer, distributor or retailer of such a product, or against both.

With regard to ATVs intended for use by children, section 3(e) of the FHSA authorizes the Commission to issue a rule declaring ATVs that do not meet specified requirements to be hazardous substances if they present a mechanical hazard as defined by section 2(s) of the FHSA. An article that is intended for children and is or contains a hazardous substance is banned under section 2(q)(1)(A) of the FHSA. In addition, section 10 of the FHSA could be used by the Commission as the basis for establishing a certification requirement for ATVs.

2. *Voluntary standard.* As discussed above, the current voluntary standard for ATVs, ANSI/SVIA–1–2001, contains requirements for equipment, configuration, and performance of four-wheel ATVs. The staff will consider whether any possible changes or additions to the voluntary standard could help reduce ATV-related deaths and injuries.

3. *Corrective Actions under Section 15.* The Commission has authority under section 15 of the CPSA, 15 U.S.C. 2064, to pursue corrective actions on a case-by-case basis if the Commission determines that a product presents a substantial product hazard.

4. *Submission of Performance and Technical Data.* Section 27(e) of the CPSA authorizes the Commission to require (by rule) that manufacturers provide the Commission with performance and technical data related to performance and safety. The Commission also may require that manufacturers provide such performance and technical data to prospective purchasers. The staff will consider whether a rule under section 27(e) could help reduce ATV-related deaths and injuries.

5. *Information and Education.* Section 5 of the CPSA authorizes the Commission to disseminate information to the public concerning data and information related to the causes and prevention of death and injury associated with consumer products. The staff will consider whether an information and education ("I&E") program could be developed that would help reduce ATV-related deaths and injuries and what such a program might include.

In accordance with the Chairman's memo, the staff will also consider the need for and possible means to accomplish the following proposals mentioned in the Chairman's memo:

(1) Pre-sale training/certification requirements;

(2) Formal notification of safety rules by dealers to buyers;

(3) The addition of a youth ATV model appropriate for 14-year olds;

(4) Written notification of child injury data at the time of sale; and

(5) Separate standards for tandem (two up) vehicles.

F. Request for Information and Comments

This ANPR is the first step in a review of ATV activities to develop regulatory and/or non-regulatory actions that will reduce ATV-related deaths and injuries. The proceeding could result in a mandatory rule for ATVs. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above.

In accordance with section 9(a) of the CPSA, the Commission solicits:

1. Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.

2. Any existing standard or portion of a standard which could be issued as a proposed regulation.

3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

In addition, the Commission is interested in receiving the following information:

1. Research suggesting a maximum safe speed for teens for any off-road vehicle;

2. Information about the adequacy of age/size guidelines for today's youth;

3. Technical reports of testing, evaluation and analysis of the dynamic stability, braking and handling characteristics of ATVs currently on the market;

4. Technical reports or standards that describe the minimum performance requirements for stability, braking and handling characteristics for ATVs;

5. Technical information on test and evaluation methods for defining ATV characteristics that are specifically relevant to the vehicles' stability.

6. Technical information on motion sensing technology that can be used to measure displacement, velocity, and acceleration of both the test operator and test vehicle.

7. Technical reports and evaluations of any prototype ATVs with enhanced safety designs.

8. Technical reports and evaluations of ATV low pressure tire performance on various surfaces.

9. Information about ATV rider training programs, including descriptions of these programs, copies of materials used, expertise of instructors, consumer reactions to the programs, evaluations of the effectiveness of these programs, etc.

10. Information about ATV rider training and education programs (including public service campaigns, videos, school materials, Web sites, etc.) targeted to children and teenagers and/or targeted to parents and any evaluations of the effectiveness of these programs.

11. Studies, reports, focus group information, etc. dealing with children and teenagers' attitudes and/or behavior regarding ATVs or other off-road vehicles.

12. Information about the feasibility and marketability of a transitional ATV geared to larger children and/or small adults, and the effect such an ATV might have on safety.

13. Information about the applicability of sensor technology to improve the safety of ATVs;

14. Studies documenting the effectiveness of state and local legislation;

15. Studies documenting the effectiveness of ATV helmet use; and

16. Information about tandem ATVs, particularly their similarities to and differences from traditional ATVs.

17. All other relevant information and suggestions about ways in which ATV safety might be improved, including proposals and specific suggestions for greater public information efforts, enhanced safety activities by ATV dealers, associations and clubs, etc.

Comments should be e-mailed to *cpsc-os@cpsc.gov.* and should be captioned "ATV ANPR." Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301) 504–0127. All comments and submissions should be received no later than December 13, 2005.

Dated: October 7, 2005.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 05–20557 Filed 10–13–05; 8:45 am]

BILLING CODE 6355–01–P

POSTAL SERVICE

39 CFR Part 111

Use of Ancillary Service Endorsement for Mailing Certain Types of Checks

AGENCY: Postal Service.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Postal Service is withdrawing a proposed rule that would require ancillary service endorsements on mailpieces containing certain types of checks.

DATES: Withdrawal effective October 14, 2005.

FOR FURTHER INFORMATION CONTACT: William Chatfield, Mailing Standards, United States Postal Service, 202–268–7278.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on October 27, 2004 (69 FR 6263), the Postal Service presented for public comment a proposed revision to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®) to require the use of ancillary service endorsements on mailpieces containing certain types of checks mailed at Standard Mail postage rates. The proposed revision was intended to protect postal customers.

We received comments from the financial industry discussing a number of safeguards for customers that reduce the incidence of fraud and the misuse of information on these checks. We have concluded that the requirements in our proposal are unnecessary, and we withdraw our proposal.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 05–20563 Filed 10–13–05; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R09–OAR–2005–CA–0009; FRL–7975–2]

Revisions to the California State Implementation Plan, Monterey Bay United Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Monterey Bay United Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) and sulfur compounds emitted by various sources. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by November 14, 2005.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2005–CA–0009, by one of the following methods:

1. Agency Web site: *http://docket.epa.gov/rmepub/.* EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.

3. E-mail: *steckel.andrew@epa.gov.*

4. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal or e-mail. The agency Web site and eRulemaking portal are "anonymous access" systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and

included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://docket.epa.gov/rmepub* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956, *Donez.Francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: MBUAPCD 404. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 13, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 05–20602 Filed 10–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2005–WI–0002; FRL–7974–5]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Wisconsin State Implementation Plan (SIP) for an alternative volatile organic compounds (VOC) control device for Serigraph, Incorporated (Serigraph). On May 18, 2005, the Wisconsin Department of Natural Resources submitted a request to revise the Wisconsin SIP. The proposed revision approves Serigraph's use of a biofilter to control VOC emissions from its printing facility in Washington County, Wisconsin. The biofilter system will reliably control emissions at or below the level of the control methods listed in the SIP. Serigraph has designed one of its plants as a permanent total enclosure (PTE), which captures all VOC emissions and routes them to the biofilter. There are no fugitive emissions from the plant. This reduces the total VOC emissions from Serigraph's facility.

In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. We do not intend to take any further action in relation to this proposed rule unless we receive adverse comment this action. If EPA receives adverse comment, we will withdraw the direct final rule and will respond to all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before November 14, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–WI–0002 by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Agency Web site: *http://docket.epa.gov/rmepub/.*

RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the online instructions for submitting comments.

E-mail: *mooney.john@epa.gov.*

Fax: (312) 886–5824.

Mail: You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–WI–0002. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or *regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I(B) of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information the disclosure of which is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago,

Illinois 60604. Please telephone Matt Rau at (312) 886–6524 before visiting the Region 5 Office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524. *Rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action applies to a single source, Serigraph, Incorporated of Washington County, Wisconsin.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit CBI to EPA through RME, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Taking Today?

EPA is proposing to approve a revision to the Wisconsin VOC SIP for Serigraph. The revision approves Serigraph's use of a biofilter to control VOC emissions from several lines in Plant 2 at its facility. This is an alternative to the controls listed in the SIP. Section NR 422.04(2)(d) of the Wisconsin Administrative Code allows an alternative control method that is demonstrated to reliably control emissions to a level at or below the applicable SIP limit and is approved by the Wisconsin Department of Natural Resources. The biofilter will reliably control VOC emissions at a level in line with other control techniques for surface printing facilities. An eighty percent overall control efficiency for VOC emissions is required for a control device. Overall control efficiency includes both capture and destruction efficiencies. Plant 2 is designed as a PTE ensuring all the emissions are captured and exhausted into the biofilter. Serigraph has operated its biofilter since May 1997. An average of 54 tons of VOC emissions are vented to the biofilter each year. The average exhaust from the biofilter is about 8 tons of VOC per year. This comfortably exceeds the control requirement.

III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at RME or in hard copy at the above address. Please telephone Matt Rau at (312) 886–6524 before visiting the Region 5 Office.

Dated: September 15, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–20613 Filed 10–13–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302, 303 and 307

State Parent Locator Service; Safeguarding Child Support Information

AGENCY: Administration for Children and Families, Office of Child Support Enforcement (OCSE).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) created and expanded State and Federal title IV–D child support enforcement databases and significantly enhanced access to information for title IV–D child support purposes. States are moving toward integrated service delivery and developing enterprise architecture initiatives to link their program databases. This proposed rule is designed to prescribe requirements for: State Parent Locator Service responses to authorized location requests; and State IV–D agency safeguarding of confidential information and authorized disclosures of this information. This proposed rule would restrict the use of confidential data and information to child support purposes, with exceptions for certain disclosures permitted by statute.

DATES: Consideration will be given to comments received by December 13, 2005.

ADDRESSES: Send comments to: Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th floor, Washington, DC 20447. Attention: Director, Policy Division, Mail Stop: OCSE/DP. Comments will be available for public inspection Monday through Friday from 8:30 a.m. to 5 p.m. on the 4th floor of the Department's offices at the above address. You may also transmit written comments electronically via the Internet at: *http://www.regulations.acf.gov.* To download an electronic version of the rule, you may access *http://www.regulations.gov.*

FURTHER INFORMATION CONTACT: Yvette Hilderson Riddick, Policy and Automation Liaison, OCSE, 202–401–4885, e-mail: *yriddick@acf.hhs.gov.* Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This notice of proposed rulemaking is published under the authority granted to the Secretary by section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. Section 1102 authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

The provisions of this proposed rule pertaining to the Federal Parent Locator Service (PLS) implement section 453 of the Act, 42 U.S.C. 653. Section 453 requires the Secretary to establish and conduct a Federal PLS to obtain and transmit specified information to authorized persons for purposes of establishing parentage, establishing, modifying, or enforcing child support obligations, and enforcing any Federal or State law with respect to a parental kidnapping; or making or enforcing a child custody or visitation determination, as described in section 463 of the Act. It authorizes the Secretary to use the services of State entities to carry out these functions.

The provisions relating to the State PLS implement section 454(8) of the Act, 42 U.S.C. 654(8), which requires each State plan for child support enforcement to provide that the State will: (1) Establish a service to locate parents utilizing all sources of information and available records and the Federal PLS; and (2) subject to the privacy safeguards in section 454(26) of the Act, 42 U.S.C. 654(26), disclose only the information described in sections 453 and 463 of the Act to the authorized persons specified in those sections.

The provisions relating to the States' computerized support enforcement systems implement section 454A of the Act, 42 U.S.C. 654a, which requires States' systems to perform such functions as the Secretary may specify relating to management of the State title IV–D program.

In addition, the provisions pertaining to safeguarding of information implement section 454(26) of the Act, which requires the State IV–D agency to have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties. Nothing in this rule is meant to prevent the appropriate use of administrative data for program oversight, management, and research.

Organization of Preamble Discussion

The preamble discussion that follows is divided into two sections. The first section discusses amendments to the regulations on locating individuals and their assets in response to authorized location requests. The second section discusses a proposed new regulation on safeguarding and disclosure of State information and amendments to the regulation on security and confidentiality of information in computerized support enforcement systems.

Provisions of the Regulation

Section 1. State Parent Locator Service (§§ 302.35, 303.3, 303.20, and 303.70)

Current Federal regulations governing the IV–D program offer minimal guidance on the role of the State PLS. Federal regulations at 45 CFR 301.1 define the term "State PLS" to mean "the service established by the IV–D agency pursuant to section 454(8) of the Act to locate parents." Resident parent in this proposed rule refers to custodial parent as established by the IV–D agency.

The regulations at 45 CFR 302.35 (a) and (b) require the IV–D agency to establish a central State PLS office using all relevant sources of information and records in the State, in other States, and in the Federal PLS.

At paragraph (c) of § 302.35, the role of the State PLS is addressed primarily in relation to the Federal PLS, specifying the individuals and entities from which the State PLS may accept requests to use the Federal PLS. Paragraph (d) restricts disclosure of Federal PLS information to these authorized persons. The current regulation does not provide guidance regarding information obtained through the State PLS from State sources. This proposed rule is intended to provide that guidance.

The regulation is silent about information obtained by the State PLS from State sources. States have interpreted both section 454(8) of the Act and current § 302.35 to permit use of State resources for non-IV–D location purposes, including location for custody and visitation purposes. This interpretation is also based upon a reading of section 453 of the Act that the "authorized persons" who are permitted to make a request to the Federal PLS—including private collection agencies or attorneys under the umbrella of "agent or attorney of a child—would also be authorized to submit requests for location services to the State PLS for matching against the State's own databases and against the databases of other States, often via the Child Support Enforcement Network.

The proposed amendments to the State PLS regulations are designed to:

- Address statutory changes from the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 regarding the information available to the State PLS from the Federal PLS;
- Reflect current processes, such as the automated match data that States routinely receive and no longer have to request from the Federal PLS; and
- Address disclosure of information obtained by the State PLS from State sources.

Section 302.35, State Parent Locator Service

The current regulation at § 302.35(a) contains a State plan requirement that the IV–D agency shall establish a State Parent Locator Service (PLS) using: (1) All relevant sources of information and records available in the State, and in other States as appropriate; and (2) the Federal PLS of the Department of Health and Human Services.

Proposed paragraph (a) would modify the current requirement for each State to "establish" a State PLS, since all States now have one, and instead require each State to "maintain" a State PLS "to provide locate information to authorized persons for authorized purposes."

The proposed § 302.35(a)(1), covering IV–D cases, is designed to require that the State PLS access "the Federal PLS and all relevant sources of information and records available in the State, and in other States as appropriate, for locating custodial and noncustodial parents for IV–D purposes." This proposed amendment makes clear that the State may use the State PLS for locating either parent for IV–D purposes. This is particularly important when a State is unable to distribute child support collections because it does not have a current address for the custodial parent. This paragraph also refers the reader to 45 CFR 303.3 for locate requirements and locate sources to be used for IV–D cases.

Revised paragraph (a)(2), covering locate requests for authorized non-IV–D individuals and purposes, would require a IV–D agency to access and release information authorized to be disclosed under section 453(a)(2) of the Act from "the Federal PLS and, unless prohibited by State law or written policy, information from relevant in-State sources of information and records, as appropriate" to respond to locate requests from a non-IV–D entity or individual specified in paragraph (c), for purposes specified in paragraph (d), as discussed below. This proposed provision implements sections 453 (a)(2) and 454(8) of the Act. Section 453(a)(2) of the Act establishes the Federal PLS to locate an individual,

wages and other income from employment, and asset information. Section 454(8) of the Act requires the State PLS to access and release information described in sections 453 and 463 of the Act from the FPLS and from "all sources of information and available records" in the State to "authorized persons specified in such sections for the purposes specified in such sections."

For non-IV–D requests, under proposed paragraph (a)(2) the State PLS would not access IRS information or financial institution data match information, which are available only to IV–D agencies, and to a limited extent to their agents, under Federal statute. The Internal Revenue Code (IRC) 26 USC6103(1), (6), (8), and (10) prohibits release of IRS information outside of the IV–D program, except for limited release allowed to IV–D contractors. This proposed regulation further restricts release of financial information received from the financial institution data match (FIDM) process under section 466(a)(17) of the Act. This prohibition implements the statutory responsibility of IV–D programs to safeguard confidential information not specifically authorized for release under section 453 of the Act. In addition, the restriction on release of financial information is intended to protect the privacy of individuals and their financial assets.

The State PLS must not access data in its computerized support enforcement system or forward the request to another State IV–D agency for locate. The State PLS would not be required to make subsequent location attempts if initial efforts fail to find the individual or information sought. However, if a requestor demonstrates that there is reason to believe that new information may be available, the State IV–D agency must make a subsequent location attempt. The State PLS would be used only in conjunction with a request for information from the Federal PLS in non-IV–D requests.

The current regulation at paragraph (b) requires that the IV–D agency must "establish a central State PLS office and may also designate additional IV–D offices within the State to submit requests to the Federal PLS." The proposed amendment to current § 302.35(b) would remove mention of a State PLS "office," in acknowledgment of changes in technology, which have prompted many States to alter their organizational structure and eliminate such "offices." It would also require the IV–D agency to "maintain" rather than "establish" a central State PLS.

The current § 302.35(c)(1) through (5) specify the authorized persons and entities from whom the State PLS shall accept requests for locate information. The proposed amendments to paragraph (c) aim to strengthen the process by which authorized requestors obtain locate information through the State PLS, specifically with respect to requests from a resident parent, legal guardian, attorney, or agent of a non-IV–A child, as explained below.

Proposed § 302.35(c)(2), covering IV–D agency requests for information, has been reworded slightly for simplicity, but is otherwise unchanged and is reprinted for ease of review.

Current § 302.35(c)(3) simply refers to the "resident parent, legal guardian, attorney, or agent of a child" in non-IV–A cases as authorized persons. This paragraph would be expanded to address two concerns. The first concern addresses evidence of noncompliance with the statutory and regulatory requirement that requestors under section 453(c)(3) of the Act pay a fee pursuant to section 453(e)(2) of the Act. The second concern involves a private non-IV–D individual or entity acting on behalf of a non-IV–A child (whether or not the child is receiving services under the IV–D plan).

Proposed § 302.35(c)(3) makes it clear that the State PLS will accept locate requests from the resident parent, legal guardian, attorney or agent of a child who is not receiving aid under title IV–A of the Act only if key requirements are met. The proposed regulation would require the individual to: (i) Attest that the request is being made to obtain information on, or to facilitate the discovery of, an individual for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations; (ii) attest that any information obtained through the Federal or State PLS will be used solely for these purposes and otherwise treated as confidential; (iii) provide evidence (*e.g.*, an ID) that the requestor is the resident (custodial) parent, legal guardian or attorney of a child not receiving aid under title IV–A of the Act, or if an agent of such a child, evidence of a valid contract that meets any requirements in State law or written policy for acting as an agent; (iv) provide evidence that the requestor is the named individual who has requisite authority (*e.g.*, guardianship papers identifying the requestor as the guardian) and (v) pay the Federal PLS fee required under section 453(e)(2) of the Act and current § 303.70(e)(2)(i) of this chapter (redesignated herein as § 303.70(f)(2)(i)), if the State does not pay the fee itself. The proposal also specifies that the State may charge a fee to cover its costs of processing these requests. A State's fee must be as close to actual costs as possible, so as not to discourage requests to use the Federal PLS. See 304.23(e) and 304.50 (a).

The attestations proposed in new clauses (i) and (ii) of § 302.35(c)(3) are modeled after the attestations that IV–D Directors or designees make in receiving Federal PLS data from OCSE under current § 303.70(d)(1) and (2). The goal is to apply to private individuals and entities requesting Federal PLS data under section 453(c)(3) the same standard to which IV–D agencies must adhere.

Proposed clause (iii) strengthens the process for ensuring that the requestor is one of the individuals authorized to act on behalf of a non-IV–A child for purposes of Federal PLS locate requests.

Proposed clause (iv) is intended to bolster the process for ensuring the required Federal fee is paid, to clarify that the State also may recover its costs through a fee, and to ensure that States are aware that no Federal financial participation is available in expenditures that States incur if they pay these fees themselves in non-IV–D cases. As indicated in § 304.50(a) the IV–D agency must exclude from its quarterly expenditures claims an amount to all fees which are collected during the quarter under the title IV–D State plan all fees which are collected during the quarter under title IV–D.

The proposed paragraph (c)(4) simplifies the language regarding the use of the Federal PLS for parental kidnapping, child custody or visitation cases. Previously, section 463 of the Act allowed States to enter into agreements to use the Federal PLS for parental kidnapping cases. Now States are required to have these agreements in place. The new language reflects the mandatory nature of this use, rather than making it contingent upon the existence of an agreement, as before. OCSE issued a recent Action Transmittal to raise awareness about use of the Federal PLS to locate a parent or child in order to: (1) Make or enforce a custody or visitation order; or (2) enforce a Federal or State law in a parental kidnapping case. This Action Transmittal, OCSE–AT–03–06, dated. December 22, 2003, is available on the OCSE website at *http://www.acf.hhs.gov/programs/cse* under the heading Policy Documents.

The proposed paragraph (c)(5) merely rewords in simpler fashion the current language allowing locate requests from State title IV–B and title IV–E agencies.

The current paragraph (d) is redesignated as paragraph (e), as discussed below. A new paragraph (d) is

proposed to be added to specify the authorized purposes for which the State PLS and the Federal PLS may be used and the locate information that may be released for these purposes. Paragraph (d)(1) covers the purposes of parentage and child support and related authorized releases of information. It pertains to IV–D and non-IV–D authorized persons and programs, including title IV–B and IV–E agencies. Proposed paragraph (d)(2) covers the purposes of enforcing a State law with respect to the unlawful taking or restraint of a child or for making or enforcing a child custody or visitation determination and the related authorized releases of information. The new paragraph (d) is intended to clarify how the purpose, requestor, and authorized release of information are tied together in responding to an information request. Section 463 of the Act, 42 U.S.C. 663, limits the information that may be disclosed for this type of inquiry.

Paragraph (d) of the current regulation, redesignated here as paragraph (e), requires privacy safeguards for Federal PLS information only. The proposed amendment, specifies at paragraphs (e)(1) and (2) that, subject to the requirements of this section and the privacy safeguards required under section 454(26) of the Act, the State PLS shall disclose "Federal PLS information" described in sections 453 and 463 of the Act and "information from in-State locate sources as required by this section and described in § 303.3(b)(1) of this chapter" only to authorized persons for authorized purposes.

A proposed Appendix A has been added at the end of this section to show graphically the linkages between authorizing statute, authorized purpose, authorized person or program, and authorized information.

Section 303.3, Location of Noncustodial Parents in IV–D Cases

The current regulation at § 303.3, Location of noncustodial parents, is divided into three main paragraphs. Paragraph (a) defines the term "location." Paragraph (b) specifies the types of cases in which "the IV–D agency must attempt to locate all noncustodial parents or sources of income and/or assets when location is necessary to take necessary action." Paragraphs (b)(1) through (5) describe the steps the IV–D agency must take under this standard. Paragraph (c) requires the State to establish guidelines defining diligent efforts to serve process.

Under the proposed regulation, § 303.3 is re-titled "Location of noncustodial parents in IV–D cases."

Under paragraph (a) location is defined to mean "information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employers(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case." The proposed amendment to paragraph (a) clarifies that the definition of "location" is applicable for this section only. It further clarifies that "location" is an action that means "obtaining information," not simply "information."

The proposed amendments to paragraph (b) and its subparagraphs clarify which location requirements apply to IV–D cases.

Paragraph 303.3(b) requires the IV-D agency to attempt to locate a noncustodial parent in a IV–D case when location is needed to take necessary action. Paragraphs (b)(1) through (5) provide an extensive list of location sources, which as discussed below are unchanged for the most part from the current regulation. While all of these sources cited in § 303.3(b)(1) are available in IV–D cases, they may not be all available in response to non-IV–D location requests, depending upon State law or written policy. We believe State IV–D agencies should search State databases upon receiving a request from a resident parent, legal guardian, attorney, or agent of a child but are allowing States to determine the extent of that search, in accordance with State law or policy. Therefore we have proposed adding the words "for IV–D services" in paragraph (b) to clarify that location provisions under this paragraph are required in IV–D cases only.

Current paragraphs (b)(1) and (2) remain unchanged, but are republished to aid the reader.

Paragraph (b)(3) currently requires timely access of all appropriate locations sources and specifies that this includes the Federal PLS. We propose to remove the words "including transmitting appropriate cases to the Federal PLS" because States now submit cases to the Federal Case Registry for automatic matching with the National Directory of New Hires for locate purposes.

The existing regulation at paragraph (b)(4) requires the IV–D agency to "Refer appropriate cases to the IV–D agency of any other State, in accordance with the requirements of § 303.7 of this part." The proposed amendment inserts the word "IV–D" before the word "cases" to clarify that the IV–D agency of State 1 may refer only IV–D cases to the IV-D agency of State 2.

Current paragraph (b)(5) remains unchanged, but is republished to aid the reader.

Proposed new paragraph (b)(6) is intended to draw a direct link between the IV–D agency's duty to locate noncustodial parents and the duty to safeguard information. The proposal incorporates by reference both the existing statutory requirement at section 454(26) of the Act and the proposed regulatory requirement at § 303.21.

Current paragraph (c) regarding diligent efforts to serve process is unchanged, but is republished to aid the reader in reviewing this section.

Section 303.20, Minimum Organizational and Staffing Requirements

The current regulation at § 303.20 describes the minimum organizational and staffing requirements for the IV–D agency. Paragraph (b) of this section requires an organizational structure and staff sufficient to fulfill specified State level functions, including, in paragraph (b)(7), "operation of the State Parent Locator Service as required under § 302.35 of this chapter."

The proposed amendment to § 303.20(b)(7) inserts "§ 303.3 and 303.70" after the citation "§ 302.35." The amendment is designed to heighten awareness about the critical role of the State PLS and ensure that the IV–D agency dedicates adequate resources to comply with the State PLS's responsibilities.

Section 303.21, Safeguarding and Disclosure of Confidential Information

As discussed below we are proposing to add a new Section 303.21 that will address safeguarding and disclosure of confidential information. This proposed regulation is discussed below in Section 2 of the Preamble.

Section 303.70, Procedures for Submissions to the State Parent Locator Service (State PLS) or the Federal Parent Locator Service (Federal PLS)

The following proposes that the Federal PLS reflect the automated matching and return of information to IV–D agencies in IV–D cases from the Federal PLS's Federal Case Registry and National Directory of New Hires. We are proposing to revise this section to address the current processes under which States no longer "request" Federal PLS information and we propose to replace the word "requests" with "submittals" wherever it appears. We are also proposing to redesignate

paragraph (a) as (b) and to insert a new paragraph (a) in this section.

Paragraph (b) as redesignated includes language regarding a central State PLS "office." For the reasons discussed earlier with regard to § 302.35, we are proposing to omit mention of a central "office." The words "submit requests for information" are replaced with "make submittals" and the phrase "for the purposes specified in paragraph (a)" is added at the end.

Current paragraph (b) is redesignated as (c) and "requests" is replaced by "submittals".

The existing regulation at § 303.70(c) is redesignated as paragraph (d). The current paragraph (c)(2) requires the IV–D agency to make "every reasonable effort" to find the individual's SSN prior to submitting a request to the Federal PLS. The newly designated paragraph (d)(2) changes this wording to "reasonable efforts," in recognition of the increased technological capabilities at the Federal level to identify an individual's SSN, or to search without it. In addition, in newly designated paragraph (d)(1) and (2), references to "requests" have been changed to "submittals" and "parent" has been changed to "parent or putative father" to clarify that information may also be sought to determine paternity.

Existing paragraph (c)(3) requires that the request indicate "whether the individual is or has been a member of the armed services, if known." Existing paragraph (c)(4) requires that the request indicate "whether the individual is receiving, or has received, any Federal compensation or benefits, if known." Because the Federal PLS now automatically conducts a search to determine whether a person is or has been a member of the armed services, this proposed amendment removes current § 303.70(c)(3). The rationale for the proposed removal of current § 303.70(c)(4) regarding searches for receipt of Federal compensation or benefits is the same as that for removal of current § 303.70(c)(3). Removal of these two obsolete paragraphs necessitates the redesignation of current paragraph (c)(5) as new paragraph (d)(3).

The current regulation at § 303.70(d) has been redesignated as paragraph (e). It requires that each request from the State PLS to the Federal PLS be accompanied by a statement from the IV–D director, attesting to compliance with the listed requirements. Due to the expansion of the Federal PLS, submittals to the Federal PLS from the State PLS are received electronically. In addition, there has been a great increase in the volume of submittals. Although the concept of requiring an attestation remains important, requiring an attestation with every submittal is impractical and overwhelming. Thus, the proposed regulation allows for a single, annual attestation of compliance by the IV–D director regarding the use of the Federal PLS. The revised paragraph (e)(1)(i) would replace language about requests for information with language specifying that the IV–D agency will "obtain" information, since States obtain most Federal PLS information automatically now without request. A new paragraph (e)(1)(ii) would clarify that the IV–D agency will only provide information to authorized persons as specified in sections 453(c) and 463(d) of the Act.

Proposed paragraph (e)(2) is new and would require that, in the case of a submittal made on behalf of a resident parent, legal guardian, attorney or agent of a child not receiving aid under title IV–A, the IV–D agency must verify that the requestor has complied with the provisions of § 302.35. The proposed paragraph is designed to add more specificity about the role of the State PLS as a gatekeeper to the Federal PLS and heighten the State PLS's scrutiny of requests made by non-IV–D entities or individuals for Federal PLS services. The cross-reference to § 302.35 is intended to tighten up the procedures for accepting such requests.

Proposed paragraph (e)(3), formerly paragraph (d)(2), has been changed to specify that the IV–D agency shall treat information obtained through the Federal PLS as confidential and shall safeguard the information in accordance with statutory requirements and proposed § 303.21. The IV–D agencies must continue to emphasize to any other entities with which they share information the importance of treating the information as confidential and safeguarding it.

Current paragraph (e) has been redesignated as (f). In new paragraph (f)(1), the statutory references have been accompanied by explanatory phrases to enable the reader to better understand their meaning without requiring reference to the Act. In addition, current paragraph (e)(4)(i) is redundant of other language in this section and we propose to remove it and redesignate (e)(4)(ii) and (iii) as (f)(4)(i) and (ii). Finally, we propose to replace the word "transmitted" in new paragraph (f)(4)(ii) with the word "paid" to allow OCSE to alter payment methods as technology advances, without a change to the regulations.

Section 2. Safeguarding and Disclosure of Confidential Information (§ 303.21 and Amended § 307.13)

In the late 1990s, several amendments to the Social Security Act dramatically expanded the scope of information available to State IV–D agencies. The chart that follows lists the specific laws that had an impact on, or otherwise expanded access to and information received by, the Federal PLS and state child support enforcement programs. In addition, the amended legislation rendered obsolete or inconsistent several Federal regulations at 45 CFR chapter III, including the former regulation at 45 CFR 303.21, Safeguarding information. That regulation was not fully responsive to the post-PRWORA context in which the IV–D program now operates and it was removed by an interim final rule published in the **Federal Register** on February 9, 1999 (64 FR 6237, finalized on May 12, 2003 at 68 FR 25293). The Description of Regulatory Provisions is in the Preamble to the interim final rule indicated that OCSE would "develop comprehensive guidance consistent with PRWORA's provisions concerning safeguarding information, including any implementing regulations that may be necessary."

Law	Summary of major requirements
Debt Collection Improvement Act (DCIA) of 1996 (Pub. L. 1104–134) (See also Executive Order 13019, September 16, 1998, and 31 CFR 285.1 and 285.3).	—Increase the collection of non-tax debt, including past-due child support, through administrative offsets.
Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (Pub. L. 104–193).	—Transit certifications of child support debts from IV–D agencies to State Department for passport restrictions. —Reimburse SSA for SSN verfication and SDNHs for furnishing information. —Prohibit disclosure of FPLS information if the State notifies HHS of family violence.

Law	Summary of major requirements
Balanced Budget Reconciliation Act of 1997 (Pub. L. 105–33)	—2% of set-aside funds made available for use by Secretary for operation FPLS, to extent costs not recovered through user fees. —Expand FPLS data available for research.
Adoption and Safe Families Act of 1997 (Pub. L. 105–89)	—Make FPLS available to specified State IV–E and IV–B agencies.
Taxpayer Relief Act of 1997 (Pub. L. 105–34)	—Require that FCR include names and SSNs of children and that data be available to Treasury for tax administration.
Child Support Performance and Incentives Act of 1998 (CSPIA) (Pub. L. 105–200).	—Establish a new incentive funding scheme based upon States' performance levels. —Assist States and multistate financial institutions, through the FPLS, in conducting a financial institution data match system. —Delete information rom the NDNH in 24 months, restrict use of NDNH data for child support purposes and permit HHS to retain samples of data for specified research purposes. —Impose a penalty for misuse of information in the NDNH.
Consolidated Appropriations Act of 1999 (Pub. L. 106–113)	—Require HHS to match NDNH data against Department of Education data to collect debts on student loans and grant overpayments. —Expand penalty for misuing NDNH data.
Consolidated Appropriations Act of 2004 (Pub. L. 108–199)	—Adds HUD access.

In recent years, a frequently voiced position of State and local officials is the need for more data sharing across automated systems, particularly to provide better support for case managers in integrating services to clients. State officials often highlight the need for expanded capabilities to query multiple automated systems to support local program managers in obtaining the information they need to meet their particular management challenges. In making a disclosure under this provision, the IV–D agency may only disclose the minimum amount of confidential information needed for the purpose provided.

The General Accounting Office (GAO) has issued several recent reports that examine the barriers to data sharing. These reports, available from GAO, include "The Challenge of Data Sharing: Results of a GAO-Sponsored Symposium on Benefit and Loan Programs' (GAO–01–67, October 20, 2000). A GAO symposium was held July 7–8, 2000 and a major issue that it addressed was privacy and data sharing. The Child Support Enforcement program's National Directory of New Hires was frequently cited by symposium participants to illustrate both the benefits of data sharing and the privacy concerns. Participants discussed how access to, and use of, shared information could be appropriately limited to official personnel for authorized purposes related to program administration.

Many States now have enterprise architecture plans that envision systems integration efforts to support the delivery of integrated services and that advance the "no wrong door" concept for clients seeking services. In the past, because of different program and funding requirements, most of the State client information and eligibility systems were designed and built in relative isolation. To support an integrated approach to service delivery, current information systems may be integrated to allow greater sharing of client data and prevent redundant data collection, to the degree allowed by Federal and State law. States pursuing this approach to customer service cite privacy and security of data as major considerations. As a result, States are eager for guidance on how to restrict access to authorized users for authorized purposes only.

In addition, we now have tribal child support programs funded under section 455(f) of the Act. States need to know what information may be provided to tribal child support agencies.

These proposed regulations will add a new 45 CFR 303.21 to address the following concerns:

- What information is covered by safeguarding requirements?
- Who is subject to the regulation?
- What general rule applies to the information and the agencies and entities subject to the regulation?
- What exceptions are there?
- What safeguards are required?
- What penalties apply if the regulation is violated?

We also propose to amend 45 CFR 307.13, Security and confidentiality for computerized support enforcement systems in operation after October 1, 1997, for consistency with the changes in this proposed regulation requiring disclosure from the computerized support enforcement system of noncustodial parent names, addresses, telephone numbers and identifying IV–A case numbers to Workforce Investment Boards, in accordance with section 454A(f)(5) of the Act, as discussed further below.

Proposed Section 303.21, Safeguarding and Disclosure of Confidential Information

The proposed regulation consists of six paragraphs: (a) Definition; (b) Scope; (c) General rule; (d) Authorized disclosures; (e) Safeguards; and (f) Penalties for unauthorized disclosure.

Proposed Section 303.21(a), Definition

The proposed regulation begins with a definition of the term "confidential information." Paragraph (a) would provide that "*confidential information* means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including, but not limited, to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. The amount of support ordered and the amount of a support collection are not considered confidential information for purposes of this section."

Proposed § 303.21(a) is designed to serve two primary purposes. First, the proposed new § 303.21 provides for safeguarding information pertaining to individuals, including not only "applicants or recipients of support enforcement services," but also other individuals about whom information is maintained by the IV–D agency, such as information about noncustodial parents and children receiving IV–D services, as well as individuals not receiving IV–D services, such as newly hired employees reported to the State Directory of New Hires, who may have no connection to the IV–D program.

Second, the proposed regulation provides that the responsibility of the IV–D agency to safeguard information applies to information that specifically relates to an identified or identifiable

individual. Thus, the phrase "including but not limited to" in § 303.21(a) is intended to highlight the types of information maintained by the IV–D agency that are most likely to be associated with a specific individual.

Proposed Section 303.21(b), Scope

The definition of the term "*confidential information*" in proposed § 303.21(a) is followed by a provision describing the scope of the proposed regulation. Proposed paragraph (b) reads: "The requirements of this section apply to the IV–D agency, any other State or local agency or official to whom the IV–D agency delegates any of the functions of the IV–D program, any official with whom a cooperative agreement as described in § 302.34 has been entered into, and any person or private agency from whom the IV–D agency has purchased services pursuant to § 304.22."

The provision extends the application of the proposed regulation beyond the IV–D agency to encompass individuals and entities performing IV–D functions under contract or cooperative agreement with the IV–D agency or from whom the IV–D agency has purchased services. Proposed § 303.21(b) comports with language in existing § 302.12, which requires that each State plan provide for the establishment or designation of a single and separate organizational unit to administer the IV–D plan. Section 302.12(a)(2) makes it clear that the IV–D agency shall be responsible and accountable for the operation of the IV–D program but, with limited exceptions, need not perform all the functions of the IV–D program. If the agency delegates any of the IV–D functions or purchases services from any individual or entity, however, § 302.12(a)(3) makes it clear that the IV–D agency shall have responsibility for securing compliance with the State plan. In part, proposed § 303.21(b) tracks the language in § 302.12(a)(3) and is generally intended to clarify that entities under cooperative agreement with the IV–D agency and private contractors to the IV–D agency are bound by the same safeguarding requirements that bind the IV–D agency and its employees. The proposed provision relating to private contractors is similar to a requirement that applies to Federal contractors under the Privacy Act of 1974 (5 U.S.C. 552a(m)(1)), which governs Federal agencies, as well as the HHS regulations implementing the Privacy Act (45 CFR 5b.2(b)(1)).

Proposed Section 303.21(c), General Rule

Proposed paragraph (c) presents a general rule which states that "[e]xcept as authorized by the Act and implementing regulations, no entity described in paragraph (b) of this section shall disclose any confidential information obtained in connection with the performance of IV–D functions outside the administration of the IV–D program."

The general rule at proposed § 303.21(c) prohibiting disclosure of confidential information is modeled after both the Federal Privacy Act and section 6103 of the IRC. Both the Privacy Act and the IRC provision on safeguarding data begin with a general prohibition on disclosure and then enumerate specific exceptions to the general rule. Proposed paragraph (d), described immediately below, enumerates the exceptions to the general rule presented in proposed paragraph (c).

Proposed Section 303.21(d), Authorized Disclosures

Proposed paragraph (d) sets forth the authorized disclosures that are exceptions to the general rule prohibiting disclosure of confidential information. Modeled after the first exception to the general prohibition against disclosure of tax information in section 6103 of the IRC, paragraph (d)(1) authorizes disclosure to the individual to whom the information pertains and anyone he or she designates. It would also enable the IV–D agency to release information that may be needed by an individual applying for certain services. In keeping with the view that an individual may consent to, or request, disclosure, this paragraph would make explicit that an individual shall be provided with his or her own confidential information, if requested. This would not include confidential information concerning any other individual involved in the case.

Under proposed paragraph (d)(2), the IV–D agency would be required to disclose information for certain limited purposes, as designated. Under paragraph (d)(2)(i), and to the extent that it does not interfere with the IV–D agency meeting its own obligations, information must be shared for administration of programs under titles IV (TANF, child and family services, and foster care and adoption programs), XIX (Medicaid program), and XXI (State Children's Health Insurance [SCHIP] program). Information is required to be shared with State programs under title IV and XIX in accordance with sections 454A(f)(3) and 453A(h)(2) of the Act. Using the Secretary's rule making authority under section 1102 of the Act, we included authority for States to share information with title XXI programs because of their close relationship with the IV–D program and because medical support is an important aspect of the Child Support Enforcement program.

Similarly, the proposed regulation would include disclosure to tribal programs authorized under titles IV–A and IV–D because of the need for these programs to work closely with State IV–D programs. State IV–D agencies are required to share information with these programs only to the extent that it does not interfere with their ability to meet their own obligations.

Programs receiving confidential information may use the information only for the purpose for which it was disclosed and may not redisclose the information. Based on the Secretary's general rulemaking authority in Section 1102, this rule proposes in paragraph (d)(2)(ii), that information may be disclosed for investigations, prosecutions or criminal or civil proceedings related to the administration of the programs listed in paragraph (d)(2)(i). Paragraph (d)(2)(iii) would permit the release of information to appropriate agencies and officials in cases of suspected child abuse. Release of such information would take the best interest of the child in consideration. Finally, paragraph (d)(2)(iv) would permit the release of information to programs designated pursuant to sections 453A and 1137 of the Act for income and eligibility verification purposes.

Proposed paragraph (d)(3) would require that, except for disclosures to title IV–A agencies, authorized disclosures under § 303.21(d)(2) shall not include confidential information from the National Directory of New Hires or Federal Case Registry, unless the information has been independently verified. No IRS information or financial institution data match information could be disclosed outside the administration of the IV–D program, unless independently verified or specifically authorized in Federal statute. IRS information is restricted as specified in the IRC. Note that financial institution data matches are authorized under section 466(a)(17) of the Act to increase the effectiveness of the IV–D program. Although a match occurs in coordination with the Federal PLS, financial institution data match information is not maintained by the Federal PLS, nor is it retrieved for Federal PLS location efforts outside the IV–D program. The information received in a financial institution data match may be used only as authorized in section 466(a)(17) of the Act for the purposes of locating and encumbering assets of a parent owing past-due

support. In addition, section 453 of the Act does not include specific reference to the Federal role as intermediary in the financial institution data match required under section 466(a)(17) of the Act and, therefore, information received from such matches is not included in "information described in sections 453 and 463" required to be disclosed under section 454(8) of the Act to "authorized persons" referenced in those sections. Further, we believe that it is critical for IV–D agencies to protect and use only for IV–D purposes any financial information received as a result of these matches.

Proposed Section 303.21(e), Safeguards

This proposed section has its historical antecedent in 45 CFR 303.21(b). Proposed paragraph (e) provides that "In addition to, and not in lieu of, the safeguards described in § 307.13 of this chapter, which governs computerized support enforcement systems, the IV–D agency shall establish appropriate safeguards to comply with the provisions of this section." Covered entities shall have in place appropriate administrative, technical, and physical safeguards. The cross-reference to part 307 is intended to make it clear that the proposed regulation applies to all confidential information obtained by the IV–D agency, whether the data is maintained in an automated or non-automated fashion.

Proposed paragraph (e) also provides that these "safeguards shall also prohibit disclosure to any committee or legislative body (Federal, State, or local) of any confidential information, unless authorized by the individual as specified in paragraph (d) of this section." This makes clear that a legislative body or governmental committee cannot compel the release of information pertaining to an individual without consent of the individual.

Proposed Section 303.21(f), Penalties for Unauthorized Disclosure

Proposed paragraph (f) provides that "[a]ny disclosure of confidential information in violation of the Act and implementing regulations remains subject to any State and Federal statutes that impose legal sanctions for such disclosure."

The reference to Federal law in proposed § 303.21(f) reflects the fact that, in addition to State statutes imposing legal sanctions, Federal statutes may also contain legal sanctions regarding the unauthorized disclosure of confidential information. Federal law grants the Secretary authority to ensure State compliance with the requirements of title IV–D through a variety of mechanisms, including reductions in quarterly payments and State plan disapproval. For example, pursuant to section 452(a) of the Act, the Secretary may disapprove a State's IV–D plan if the plan fails to comply with the requirements of section 454, including paragraph (26) of that section, requiring States to safeguard confidential information.

An Appendix A has been included at the end of this section to show graphically the linkages between authorizing statute, authorized purposes for release of information, authorized persons or programs, and authorized information.

Section 307.13—Security and Confidentiality for Computerized Support Enforcement Systems in Operation After October 1, 1997

Section 307.13 addresses security and confidentiality of computerized systems. We are revising paragraph (a) of § 307.13. Under the proposed rule, current paragraphs (a), (a)(1) and (a)(2) are unchanged, but have been republished to aid the reader. Paragraph (a) requires the State IV–D agency to have safeguards, including written policies, concerning access to data in the State's computerized support enforcement system. Paragraph (a)(1) requires the IV–D agency to have written policies to permit access to and use of data to the extent needed to carry out the State IV–D program. Paragraph (a)(2) requires the IV–D agency to specify in its written policies the data that may be used for particular program purposes, and the personnel permitted access to such data.

Current § 307.13(a)(3) requires that the State agency have written procedures to permit access to data by title IV–A and XIX programs, as necessary for their program purposes We are proposing to revise this paragraph to require the IV–D agency exchange data from its computerized support enforcement system with other title IV programs and the State Children's Health Insurance Program (SCHIP), to the extent that it does not interfere with the IV–D agency meeting its own obligations. The Office of the Inspector General, HHS, has conducted studies in cooperation with several States that demonstrated that many noncustodial parents are able to contribute to the costs of public health insurance, including SCHIP, on behalf of their children. The exchange and sharing of data between IV–D agencies and various other State and tribal IV–A and IV–D agencies, as well as State Medicaid and SCHIP programs, is critical to the success of these programs achieving their mutual goals, ensuring that families attain and maintain their independence from government cash and medical assistance.

In addition, the proposed regulation adds a new paragraph (a)(4) to require written policies that permit disclosure of noncustodial parent names, addresses, telephone numbers and identifying IV–A case numbers to Workforce Investment Boards (formerly called private industry councils) that receive welfare-to-work grants, as authorized in section 454A(f)(5) of the Act. These Boards support work for low-income noncustodial parents in their service areas.

The proposed paragraph (a)(5) would require written policies that limit disclosure, outside the IV–D program, of National Directory of New Hire or Federal Case Registry information, IRS information or financial institution data match information, from the computerized support enforcement system, to information that has been independently verified. The rationale for these limitations is discussed previously in this Preamble. The single exception would be the required disclosure of National Directory of New Hire or Federal Case Registry information to title IV–A agencies, where verification before disclosure is not required.

Paperwork Reduction Act

Section 302.35(c) contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

The Locate Request Attestation in the proposed § 302.35(c)(3) is the information collection requirement, which is proposed to ensure that only authorized persons obtain information from the Federal PLS. The State IV–D agency would be required to obtain an attestation from each resident parent, legal guardian, attorney or agent of a child not receiving aid under title IV–A who requests information from the Federal PLS. Each requesting individual must: (1) Attest that the request for locate information is being made for an authorized purpose; (2) attest that the information will be used only for the authorized purpose and otherwise treated as confidential; and (3) provide evidence that the requestor is an authorized person. This information will be used to verify that the person making the request for Federal PLS information is in fact the resident parent, legal guardian, attorney or agent

of a child not receiving aid under title IV–A and to ensure that this person understands that the information must only be used for child support purposes and otherwise treated as confidential.

The respondents affected by this information collection are State agencies and the parent, legal guardian, attorney or agent of a child not receiving aid under title IV–A.

Estimated number of respondents	Proposed frequency of response	Average burden per response	Total annual burden
54	1 per week	.25 hour	702 hours.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in the following areas:

- Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of the ACF's estimate of the burden of the proposed collection[s] of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC20503, Attention: Desk Officer for the Administration for Children and Families.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This regulation responds to State requests for guidance on data privacy issues and therefore should not raise negative impact concerns.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

We have determined that this rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments. Based on FY2004 data and analysis, some States allowing Private Collection Agencies to submit requests for location services to the FPLS, would at most double the amount of locate requests received by the FPLS. In FY2004, states reimbursed the FPLS for 20% of these types of costs. Therefore, the net cost to the FPLS would be less than .2% of the overall FPLS costs.

Congressional Review

This notice of proposed rule making is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulations may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation protects the confidentiality of information contained in the records of State child support enforcement agencies. These regulations will not have an impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. We do not believe the regulation has federalism impact as defined in the Executive order. However, consistent with Executive Order 13132, the Department specifically solicits comments from State and local government officials on this proposed rule.

List of Subjects

45 CFR Part 302

Child support, Grants programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 307

Child support, Grant programs/social programs, computer technology,

Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program.)

Dated: October 26, 2004.

Wade F. Horn,

Assistant Secretary for Children and Families.

Approved: June 24, 2005.

Michael O. Leavitt,

Secretary of Health and Human Services.

For the reasons discussed above, we propose to amend title 45 chapter III of the Code of Federal Regulations as follows:

PART 302—STATE PLAN REQUIREMENTS

1. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

2. Section 302.35 is revised to read as follows:

§ 302.35 State parent locator service.

The State plan shall provide as follows:

(a) *State PLS.* The IV–D agency shall maintain a State PLS to provide locate information to authorized persons for authorized purposes.

(1) *For IV–D cases*—The State PLS shall access the Federal PLS and all relevant sources of information and records available in the State, and in other States as appropriate, for locating custodial and noncustodial parents for IV–D purposes. Locate requirements for IV–D cases are specified in § 303.3 of this chapter; and

(2) *For authorized non-IV–D individuals and purposes*—(i) The State PLS shall access and release information authorized to be disclosed under Section 453(a)(2) of the Act from the Federal PLS and, unless prohibited by State law or written policy, information from relevant in-State sources of information and records, as appropriate, for locating noncustodial parents upon request of authorized individuals specified in paragraph (c) of this section, for authorized purposes specified in paragraph (d) of this section.

(ii) For a non-IV–D request, the State PLS shall not release information from the computerized support enforcement system required under part 307 of this chapter, IRS information, or financial institution data match information, nor shall the State PLS forward the request to another State IV–D agency.

(iii) The State PLS need not make subsequent location attempts if locate efforts fail to find the individual sought.

(iv) The State PLS may only be used in conjunction with a request for information from the Federal PLS in non-IV–D cases.

(b) *Central State PLS requirement.* The IV–D agency shall maintain a central State PLS to submit requests to the Federal PLS.

(c) *Authorized persons.* The State PLS shall accept requests for locate information only from the following authorized persons:

(1) Any State or local agency or official providing child and spousal support services under the State plan;

(2) A court that has authority to issue an order or to serve as the initiating court in an action to seek an order against a noncustodial parent for the support and maintenance of a child, or any agent of such court;

(3) The resident parent, legal guardian, attorney, or agent of a child who is not receiving aid under title IV–A of the Act only if the individual:

(i) Attests that the request is being made to obtain information on, or to facilitate the discovery of, any individual in accordance with section 453(a)(2) of the Act for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations;

(ii) Attests that any information obtained through the Federal or State PLS shall be used solely for these purposes and shall be otherwise treated as confidential;

(iii) Provides evidence that the requestor is either the resident parent, legal guardian or attorney of a child not receiving aid under title IV–A, or if an agent of such a child, evidence of a valid contract that meets any requirements in State law or written policy for acting as an agent; and

(iv) Pays the fee required for Federal PLS services under section 453(e)(2) of the Act and § 303.70(f)(2)(i) of this chapter, if the State does not pay the fee itself. The State may also charge a fee to cover its costs of processing the request, which must be as close to actual costs as possible, so as not to discourage requests to use the Federal PLS. If the State itself pays the fee for use of the Federal PLS or the State PLS in a non-IV–D case, Federal financial participation is not available in those expenditures.

(4) Authorized persons as defined in § 303.15 of this chapter in connection with parental kidnapping, child custody or visitation cases; or

(5) A State agency that is administering a program operated under a State plan under titles IV–B or IV–E of the Act.

(d) *Authorized purposes for requests.* The State PLS shall obtain location information under this section only for the purposes specified in paragraphs (d1) and (d2) of this section:

(1) *To locate an individual who may be the parent of a child in a IV–D or non-IV–D case.* The State PLS shall locate individuals for the purpose of establishing parentage, or establishing, setting the amount of, modifying, or enforcing child support obligations or for determining who has or may have parental rights with respect to a child. For these purposes, only information available through the Federal PLS or the State PLS may be provided. This information is limited to Social Security number(s), most recent address, employer name and address, employer identification number, wages or other income from, and benefits of, employment, including rights to, or enrollment in, health care coverage, or asset and debt information;

(2) *To locate an individual sought for the unlawful taking or restraint of a child or for child custody or visitation purposes.* The State PLS shall locate individuals for the purpose of enforcing a State law with respect to the unlawful taking or restraint of a child or for making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act. For this purpose, only the information available through the Federal PLS or the State PLS may be provided. This information is limited to most recent address and place of employment of a parent or child.

(e) *Locate information subject to disclosure.* Subject to the requirements of this section and the privacy safeguards required under section 454(26) of the Act, the State PLS shall disclose the following information to authorized persons for authorized purposes:

(1) Federal PLS information described in sections 453 and 463 of the Act; and

(2) Information from in-State locate sources as required by this section and described in § 303.3(b)(1) of this chapter.

Appendix A to § 302.35—Locating Individuals Through the State PLS [1]

Authority: Sec. 453 of the Act; 45 CFR 302.35, State Parent Locator Service.

Authorized purpose	Authorized person/program	Authorized information
A. Locating a parent or child involved in a IV–D child support case.	State IV–D agencies	From FPLS, in-state sources and other states as appropriate, individual's name, address and SSN; employer's name, address, and Federal Employer Identification Number (FEIN), wages, income and benefits from employment, including health care coverage, and asset or debt information.
B. Locating a parent or child involved in a non-IV–D child support case.	• Court/agent of court with authority to issue support order. • Resident parent, legal guardian, attorney or agent of a non-IV–A child.	From FPLS, and from in-state sources (unless prohibited), first 6 items above, wages, income and benefits from employment, including health care coverage, and asset or debt information available from a Federal or State agency. No automated system or other states' data; no IRS information; no FIDM information; no subsequent attempts to locate unless additional information is provided.
C. Locating an individual sought in a parental kidnapping, child custody or visitation case.	• A court with jurisdiction to order/enforce custody or visitation. • Agent/attorney of state with authority to enforce custody or visitation rights. • Agent or attorney of US or a state with authority to investigate, enforce or prosecute unlawful taking or restraint of a child.	From FPLS and in-state sources (unless prohibited), most recent address and place of employment. No automated system or other states' data; no IRS information; no FIDM information; no subsequent attempts to locate unless additional information is provided.
D. Locating an individual who is or may be a parent of a child.	State IV–B and IV–E agencies	From FPLS, and from in-state sources (unless prohibited) first 6 items above, wages, income and benefits from employment, including health care coverage, and asset or debt information if available from a Federal or State agency. No automated system or other states' data; no IRS information; no FIDM information; no subsequent attempts to locate.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation for part 303 is amended to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Revise § 303.3 to read as follows:

§ 303.3 Location of noncustodial parents in IV–D cases.

(a) *Definition.* For purposes of this section, *location* means obtaining information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a IV–D case.

(b) For all cases referred to the IV–D agency for IV–D services because of an assignment of support rights or cases opened upon application for IV–D services under § 302.33 of this chapter, the IV–D agency must attempt to locate all noncustodial parents or their sources of income and/or assets when location is necessary to take a necessary action. Under this standard, the IV–D agency must:

(1) Use appropriate location sources such as the Federal PLS; interstate location networks; local officials and employees administering public assistance, general assistance, medical assistance, food stamps, and social services (whether such individuals are employed by the State or a political subdivision); relatives and friends of the noncustodial parent, current or past employers; the local telephone company; the U.S. Postal Service; financial references; unions; fraternal organizations; and police, parole, and probation records, if appropriate; and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages, and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records and other sources;

(2) Establish working relationships with all appropriate agencies in order to use locate resources effectively;

(3) Within no more than 75 calendar days of determining that location is necessary, access all appropriate location sources and ensure that location information is sufficient to take the next appropriate action in a case;

(4) Refer appropriate IV–D cases to the IV–D agency of any other State, in accordance with the requirements of § 303.7. The IV–D agency of such other State shall follow the procedures in paragraphs (b)(1) through (b)(3) of this section for such cases, as necessary, except that the responding State is not required to access the Federal PLS;

(5) Repeat location attempts in cases in which previous attempts to locate noncustodial parents or sources of income and/or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location, either quarterly or immediately upon receipt of new information which may aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated sources, but must include accessing State employment security files. Repeated attempts because of new information which may aid in location must meet the requirements of paragraph (b)(3) of this section; and

[1] *Related regulations on locate function:* 45 CFR 303.3, Location of Noncustodial Parents in IV–D Cases; 45 CFR 303.20, Minimum Organizational and Staffing Requirements; 45 CFR 303.70, Procedures for Providing Information to the State PLS from the Federal PLS.

(6) Have in effect safeguards, applicable to all confidential information handled by the IV–D agency, that are designed to protect the privacy rights of the parties and that comply with the requirements of section 454(26) of the Act and § 303.21.

(c) The State must establish guidelines defining diligent efforts to serve process. These guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process.

4. Section 303.20 is amended by revising paragraph (b)(7) as follows:

§ 303.20 Minimum organizational and staffing requirements.

(b) * * *

(7) Operation of the State PLS as required under §§ 302.35, 303.3, and 303.70 of this chapter.

* * * * *

5. In 45 CFR part 303, § 303.21 is added to read as follows:

§ 303.21 Safeguarding and disclosure of confidential information.

(a) *Definition. Confidential information* means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. The amount of support ordered and the amount of a support collection are not considered confidential information for purposes of this section.

(b) *Scope.* The requirements of this section apply to the IV–D agency, any other State or local agency or official to whom the IV–D agency delegates any of the functions of the IV–D program, any official with whom a cooperative agreement as described in § 302.34 of this chapter has been entered into, and any person or private agency from whom the IV–D agency has purchased services pursuant to § 304.22 of this chapter.

(c) *General rule.* Except as authorized by the Act and implementing regulations, no entity described in paragraph (b) of this section shall disclose any confidential information obtained in connection with the performance of IV–D functions outside the administration of the IV–D program.

(d) *Authorized disclosures.* (1) The entities described in paragraph (b) of this section shall, subject to such requirements as the Office may prescribe, disclose confidential information to such person or persons designated by the individual to whom the information relates to the extent necessary to comply with the consent or request of the individual. These entities shall also provide an individual his or her confidential information, upon request. This does not include providing an individual with confidential information concerning any other individual involved in the case.

(2) The IV–D agency must, to the extent that it does not interfere with the IV–D agency meeting its own obligations and subject to such requirements as the Office may prescribe, disclose confidential information for purposes directly connected with:

(i) The administration of the plan or program approved under titles IV, XIX, or XXI of the Act;

(ii) Any investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of any such plan or program;

(iii) Reporting to an appropriate agency or official, information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child under circumstances which indicate that the child's health or welfare is threatened; and

(iv) Reporting to programs designated pursuant to sections 453A and 1137 of the Act for purposes of income and eligibility verification.

(3) With the exception of disclosures to title IV–A agencies, authorized disclosures under paragraph (d)(2) of this section shall not include confidential information from the National Directory of New Hires or the Federal Case Registry, unless the information has been independently verified. No IRS information or financial institution data match information may be disclosed outside the administration of the IV–D program, unless independently verified or otherwise authorized in Federal statute.

(e) *Safeguards.* In addition to, and not in lieu of, the safeguards described in § 307.13 of this chapter, which governs computerized support enforcement systems, the IV–D agency shall establish appropriate safeguards to comply with the provisions of this section. These safeguards shall prohibit disclosure to any committee or legislative body (Federal, State, or local) of any confidential information, unless authorized by the individual about whom the information relates as specified in paragraph (d) of this section.

(f) *Penalties for unauthorized disclosure.* Any disclosure of confidential information in violation of the Act and implementing regulations shall be subject to any State and Federal statutes that impose legal sanctions for such disclosure.

Appendix A to § 303.21—Safeguarding Confidential Information

[Confidential information must be safeguarded and released only as authorized]

Authority	Authorized purpose	Authorized person/program	Authorized information
A. Sec 453(l) of the Act; Sec 454 (26) of the Act; Sec. 1102 of the Act; 45 CFR 303.21—authorized release of information.	(1) Comply with request of individual.	Individual to whom information relates.	Individual's own confidential information from any IV–D agency records.
	(2) To report child abuse or neglect.	Appropriate agency or official.	Limited to confidential information from IV–D agency records (including computerized support enforcement system at state option) to extent necessary to make report; no NDNH, FCR, IRS or FIDM information unless independently verified.

Authority	Authorized purpose	Authorized person/program	Authorized information
	(3) For Administration or investigation of authorized programs.	Title IV, XIX, and XXI programs, including tribal programs under these titles.	Limited to confidential information from IV–D agency records (including computerized support enforcement system at state option) to extent necessary for administration or investigation of programs; no NDNH, FCR, IRS or FIDM information unless independently verified, except NDNH or FCR information is available to IV–A programs without verification.
(B) Sec. 454A(f)(3) and (5) of the Act; Sec 1102 of the Act; and 45 CFR 307.13—computerized support enforcement system.	(1) To perform state agency responsibilities of designated programs.	State or tribal agencies administering Title IV, XIX, and XXI programs.	Confidential information in automated system; no NDNH, FCR, IRS or FIDM information unless independently verified, except NDNH or FCR information is available to IV–A programs without verification.
	(2) To identify and contact NCPs for participation in welfare-to-work program.	Workforce Investment Boards that receive welfare-to-work grants.	NCP name, address, phone number and identifying IV–A, case number; no NDNH, FCR, IRS or FIDM information unless independently verified.
C. Sec 453A(h)(2) and 1137 of the Act—State Directory of New Hires.	Income and eligibility verification purposes of designated programs.	State agencies administering title IV–A, Medicaid, unemployment compensation, food stamp, or other state program under a plan approved under title I, X, XIV or XVI of the Act.	Limited to the following employer-reported information provided to the SDNH—individual's name, address and SSN and employer's name, address and FEIN (federal employer identification number); programs must independently verify the information before taking action affecting the individual; no NDNH, FCR, IRS or FIDM information unless independently verified.

6. Revise § 303.70 to read as follows:

§ 303.70 Procedures for submissions to the State Parent Locator Service (State PLS) or the Federal Parent Locator Service (Federal PLS).

(a) For the purpose of locating individuals in a paternity establishment case, a case involving the establishment, modification, or enforcement of a support order, a case involving the unlawful taking or restraint of a child or a child custody or visitation case, the Federal PLS will compare information in the Federal Case Registry and the National Directory of New Hires and report match information to the State IV–D agency or agencies involved in the case, consistent with section 453 of the Act.

(b) Only the central State PLS may make submittals to the Federal PLS for the purposes specified in paragraph (a) of this section.

(c) All submittals shall be made in the manner and form prescribed by the Office.

(d) All submittals shall contain the following information:

(1) The parent's or putative father's name;

(2) The parent's or putative father's social security number (SSN). If the SSN is unknown, the IV–D agency must make reasonable efforts to ascertain the individual's SSN before making a submittal to the Federal PLS; and

(3) Any other information prescribed by the Office.

(e) The director of the IV–D agency or his or her designee shall attest annually to the following:

(1)(i) The IV–D agency will only obtain information to facilitate the discovery of any individual in accordance with section 453(a)(2) of the Act for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or for determining who has or may have parental rights with respect to a child, or in accordance with section 453(a)(3) for enforcing a State law with respect to the unlawful taking or restraint of a child, or for making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act.

(ii) The IV–D agency will only provide information to the authorized persons specified in sections 453(c) or 463(d) of the Act.

(2) In the case of a submittal made on behalf of a resident parent, legal guardian, attorney or agent of a child not receiving aid under title IV–A, the IV–D agency will verify that the requesting individual has complied with the provisions of § 302.35 of this chapter.

(3) The IV–D agency will treat any information obtained through the Federal PLS as confidential and shall safeguard the information under the requirements of sections 453(b), 453(l), 454(8), 454(26), and 463(c) of the Act, § 303.21 and instructions issued by the Office.

(f)(1) The IV–D agency shall reimburse the Secretary for the fees required under:

(i) Section 453(e)(2) of the Act whenever Federal PLS services are furnished to a resident parent, legal guardian, attorney or agent of a child not receiving aid under title IV–A of the Act;

(ii) Section 454(17) of the Act whenever Federal PLS services are furnished in parental kidnapping and child custody or visitation cases;

(iii) Section 453(k)(3) of the Act whenever a State agency receives information from the Federal PLS pursuant to section 453 of the Act.

(2)(i) The IV–D agency may charge an individual requesting information, or pay without charging the individual, the fees referenced in paragraph (f)(1) of this section.

(ii) The State may recover the fee required under section 453(e)(2) of the Act from the noncustodial parent who owes a support obligation to a family on whose behalf the IV–D agency is providing services and repay it to the individual requesting information or itself.

(iii) State funds used to pay the fee under section 453(e)(2) of the Act are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(3) The fees referenced in paragraph (f)(1) of this section shall be reasonable and as close to actual costs as possible so as not to discourage use of the Federal PLS by authorized individuals.

(4)(i) If a State fails to pay the fees charged by the Office under this section, the services provided by the Federal PLS in cases subject to the fees may be suspended until payment is received.

(ii) Fees shall be paid in the amount and manner prescribed by the Office in instructions.

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS IN OPERATION AFTER OCTOBER 1, 1997

1. The authority citation for part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666 through 669A, and 1302.

2. Amend § 307.13 by revising paragraph (a) to read as follows:

§ 307.13 Security and confidentiality for computerized support enforcement systems in operation after October 1, 1997.

* * * * *

(a) *Information integrity and security.* Have safeguards protecting the integrity, accuracy, completeness of, access to, and use of data in the computerized support enforcement system. These safeguards shall include written policies concerning access to data by IV–D agency personnel, and the sharing of data with other persons to:

(1) Permit access to and use of data to the extent necessary to carry out the State IV–D program under this chapter;

(2) Specify the data which may be used for particular IV–D program purposes, and the personnel permitted access to such data;

(3) Permit exchanging information with State and tribal agencies administering programs under titles IV, XIX, and XXI of the Act, to the extent necessary to carry out State and tribal agency responsibilities under such programs in accordance with section 454A(f)(3) of the Act; and to the extent that it does not interfere with IV–D agency meeting its own obligations.

(4) Permit disclosure of noncustodial parent names, addresses, telephone numbers, and identifying IV–A case number information to Workforce Investment Boards (formerly called private industry councils) that receive welfare-to-work grants as specified in section 454A(f)(5) of the Act.

(5) Except for disclosure of National Directory of New Hire or Federal Case Registry information to title IV–A agencies, limit disclosure of National Directory of New Hire or Federal Case Registry information, IRS information or financial institution data match information, outside the IV–D program, to information that has been independently verified.

* * * * *

[FR Doc. 05–20508 Filed 10–13–05; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 90-Day Finding on a Petition To List the California Spotted Owl as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the status review initiated by the 90-day finding on a petition to list the California spotted owl (*Strix occidentalis occidentalis*) as threatened or endangered, under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). On June 21, 2005 (70 FR 35607), we published a positive 90-day finding and initiated a status review of the subspecies to determine if listing under the Act is warranted. The original comment period closed on August 22, 2005. To ensure that the status review is comprehensive, we are reopening the comment period to solicit additional scientific and commercial information regarding this subspecies. This will allow all interested parties an additional opportunity to provide information on the status of the subspecies under the Act.

DATES: To be considered in the 12-month finding for this petition, comments and information must be submitted directly to the Service (see **ADDRESSES**) by October 28, 2005. All comments submitted to the Service from June 21, 2005, through October 28, 2005, will be considered by the Service in the development of the 12-month finding, but any comments received after the closing date may not be considered in that finding.

ADDRESSES: If you wish to comment, you may submit your comments, new information, materials, or questions concerning this species by any one of the following methods:

(1) You may submit written comments to the Field Supervisor (Attn: California Spotted Owl), U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825.

(2) You may send comments by electronic mail (e-mail) to: *ca_spotted_owl@fws.gov*. See the "Public Comments Solicited" section below for file format and other information on electronic filing.

(3) You may fax your comments to (916) 414–6712.

(4) You may hand-deliver comments to our Sacramento Fish and Wildlife Office at the address above.

See also the "Public Information Solicited" section for more information on submitting comments.

All comments and materials received, as well as supporting documentation used in the preparation of the 90-day finding, status review, and 12-month finding, will be available for public inspection, by appointment, during normal business hours, at the above address. You may obtain copies of the 90-day finding from the above address, by calling (916) 414–6600, or from our Web site at *http://www.fws.gov/pacific/sacramento/*.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Sacramento Fish and Wildlife Office (see **ADDRESSES** above), or at telephone (916) 414–6600, or by facsimile at (916) 414–6712. You may also obtain additional information on our Web site at *http://www.fws.gov/pacific/sacramento/*. Information regarding the 90-day finding is available in alternative formats upon request.

SUPPLEMENTARY INFORMATION:

Public Information Solicited

We request any additional data, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the California spotted owl. Of particular interest in the status review is information pertaining to the factors the Service uses to determine if a species is threatened or endangered: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) other natural or human-caused factors affecting its continued existence.

We are particularly seeking comments and information concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the California spotted owl;

(2) The location of any additional subpopulations or breeding sites of this species, and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population sizes of this species; and

(4) Information regarding barred owl (*Strix varia*) range, distribution, and population size as it relates to California spotted owl.

(5) Current or planned activities or land use practices in the subject area and their possible impacts on this animal.

In addition, we request data and information regarding the changes identified in the "Summary of Threats Analysis" section in the 90-day finding (70 FR 35607).

Finally, if we determine that listing the owl is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we would propose to list the species. Therefore, we request scientific information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found and whether any of these areas are in need of special management, and whether there are areas not containing these features which might be essential to the conservation of the species. Please provide specific comments as to what, critical habitat, if any, should be proposed for designation if the species is proposed for listing, and why that proposed habitat meets the requirements of the Act.

Previously submitted comments need not be resubmitted. If you submit comments by electronic mail (e-mail), please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: California Spotted Owl Status Review" and your name and address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. We will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Background

On June 21, 2005 (70 FR 35607), we published a positive 90-finding on a petition to list the California spotted owl as threatened or endangered under the Act (i.e., we determined that the petition presents substantial scientific or commercial information indicating that listing the species may be warranted). For further information regarding the biology of this subspecies, previous Federal actions, factors affecting the subspecies, and conservation measures available to the California spotted owl, please refer to the 90-day finding (70 FR 35607) and previous **Federal Register** notices regarding the California spotted owl (65 FR 60605; 68 FR 7580).

When we make a positive 90-day finding, we are required to promptly commence a review of the status of the species. Based on results of the status review, we will make a 12-month finding as required by section 4(b)(3)(B) of the Act on or before March 14, 2006. To ensure that the status review is complete and based on the best available scientific and commercial data, we are soliciting additional information on the California spotted owl. Pursuant to 50 CFR 424.16(c)(2), we may extend or reopen a comment period upon finding that there is good cause to do so. Because of the large volume of information relating to forest management activities within the range of the California spotted owl, and the number of scientists involved in monitoring the status of the California spotted owl and its habitat, we seek additional time to receive information and comments relating to the status of the owl from federal, state, and private scientists. We will reopen the comment period until October 28, 2005. This reopening of the comment period will not affect the date by which the Service will make its 12-month finding.

Author

The primary authors of this notice are staff of the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 23, 2005.

Marshall P. Jones Jr.,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 05–20646 Filed 10–13–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AT60

Migratory Bird Permits; Changes in the Regulations Governing Raptor Propagation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (we or us) proposes changes in the regulations governing captive propagation of raptors in the United States. We propose reorganization of the current regulations, and we have added or changed some provisions therein. The changes will make it easier to understand the requirements for raptor propagation and the procedures for obtaining a propagation permit.

DATES: Send comments on this proposal by January 12, 2006.

ADDRESSES: You may submit comments, identified by RIN 1018–AT60, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://migratorybirds.fws.gov*. Follow the links to submit a comment.
- E-mail address for comments: *PropagationRegulations@fws.gov*. Include "RIN 1018–AT60" in the subject line of the message.
- Mailing address for paper or computer media comments: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4107, Arlington, Virginia 22203–1610.
- Address for hand delivery of comments: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, Virginia 22203–1610.

Instructions: All submissions received must include Regulatory Information Number (RIN) 1018–AT60 at the beginning. All comments received, including any personal information provided, will be available for public inspection at the address shown above for hand delivery of comments. For detailed instructions on submitting

comments and additional information on the rulemaking process, see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1714, or Dr. George T. Allen, Wildlife Biologist, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service is the Federal agency with the primary responsibility for managing migratory birds. Our authority is based on the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Raptors (birds of prey) are afforded Federal protection by the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States—Mexico, as amended; the Convention between the United States and Japan for the Protection of Migratory Birds in Danger of Extinction and Their Environment, September 19, 1974; and the Convention Between the United States of America and the Union of Soviet Socialist Republics (Russia) Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976.

The taking and use of raptors are strictly prohibited except as permitted under regulations implementing the MBTA. Raptors also may be protected by State regulations. Regulations governing the issuance of permits for migratory birds are authorized by the MBTA and subsequent regulations. They are in title 50, Code of Federal Regulations, parts 10, 13, 21, and (for eagles) 22.

Changes in the Regulations Governing Raptor Propagation

We have rewritten the regulations in plain language and have changed or added some provisions. We seek comment on these proposed regulations, particularly the following substantive changes:

1. The permit period is changed from 3 to 5 years.

2. Raptor propagation permits will no longer be renewed without evidence of successful captive propagation during the term of the permit.

3. All birds held under a captive propagation permit must actually be used in propagation or permission to continue to hold them under the permit will not be granted.

4. Captive-bred progeny may be trained for use in falconry. Until they are 1 year old, captive-bred offspring may be used in actual hunting as a means of training them.

5. The requirement for reporting within 5 days on eggs laid by birds in captive propagation is eliminated. An annual report on propagation efforts is all that will be required of permittees.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol § and a numbered heading; for example "§ 21.30 Raptor propagation permits.") (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to *Exsec@ios.doi.gov*.

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action.

a. This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This is primarily a plain-language rewrite of the current regulation. A cost-benefit and economic analysis thus is not required. We foresee no particular effects on people practicing raptor propagation.

b. This rule will not create inconsistencies with other agencies' actions. The rule deals solely with governance of captive raptor propagation in the United States. No other Federal agency has any role in regulating this endeavor.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of raptor propagation.

d. This rule will not raise novel legal or policy issues. This rule is primarily a reorganization and plain language rewrite of the existing regulations. New provisions proposed in the rule are in compliance with other laws, policies, and regulations.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Pub. L. 104–121), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no RFA is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities. This determination is based on the fact that we are not proposing any changes to the current requirements for raptor propagation facilities (housing). The changes we are proposing are intended primarily to clarify the requirements for raptor propagation and the procedures for obtaining a raptor propagation permit. In addition, the changes we propose affect neither the information collected nor the fee required to obtain a permit. Consequently, we certify that this proposed rule will not have a significant economic effect on a substantial number of small entities, and thus a regulatory flexibility analysis is not required. Thus, this is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)) because it will not have

a significant impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of $100 million or more. We foresee no effects on the economy from implementation of this rule.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The practice of raptor propagation does not significantly affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Raptor propagation is an endeavor of private individuals. Neither regulation nor practice of raptor propagation significantly affects business activities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not "significantly or uniquely" affect small governments, and thus a Small Government Agency Plan is not required. Raptor propagation is an endeavor of private individuals. Neither regulation nor practice of raptor propagation affects small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. States will not have to alter their raptor propagation regulations to comply with the proposed revisions.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule has no provision for taking of private property. A takings implication assessment is thus not required.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under Executive Order 13132. It will not interfere with the States' ability to manage themselves or their funds. No significant economic impacts should result from the proposed changes in the regulation of raptor propagation. However, this rule provides the opportunity for States to cooperate in management of raptor propagation permits and to ease the permitting process for permit applicants.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. Information collection required by this proposed regulation is covered by OMB approval 1018–0022, which expires on July 31, 2007. This regulation does not add to that approved information collection. The Service 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.

National Environmental Policy Act

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437f) and Part 516 of the U.S. Department of the Interior Manual (516 DM). We prepared an environmental assessment (EA) in July 1988 to support establishment of regulations governing the use of most raptors in falconry. You can obtain a copy of the EA by contacting us at the address in the **ADDRESSES** section. This rule does not change the allowed take of raptors from the wild. We will prepare an updated Environmental Assessment on the take of raptors for use in propagation during the rulemaking process to determine whether these proposals are major Federal actions significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. This rule will not interfere with the Tribes' ability to manage themselves or their funds, or to regulate raptor propagation on tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 addressing regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the practice of raptor propagation in the United States, it is not a significant regulatory action under Executive Order 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and thus no Statement of Energy Effects is required.

Are There Environmental Consequences of the Proposed Action?

The changes we propose are primarily in the combining, reorganizing, and rewriting of the regulations. The environmental impacts of this action are limited.

Socio-economic. We do not expect the proposed action to have discernible socio-economic impacts.

Raptor populations. This rule will not significantly alter the conduct of raptor propagation in the United States. We expect it to have no discernible effect on raptor populations.

Endangered and Threatened Species. The regulations have no new provisions that affect threatened or endangered species.

Does This Rule Comply With Endangered Species Act Requirements?

Yes. Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "insure that any authorized, funded, or completed action "is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" (16 U.S.C. 1536(a)(2)). The Division of Threatened and Endangered Species concurred with our finding that the revised regulations will not affect listed species.

Author

The primary author of this rulemaking is Dr. George T. Allen, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop MBSP–4107, Arlington, Virginia 22203–1610.

Public Participation

You may submit written comments on this proposal to the location identified in the **ADDRESSES** section, or you may submit electronic comments to the internet address listed in the **ADDRESSES** section. We must receive your comments before the date listed in the **DATES** section. Following review and consideration of comments, we will issue a final rule on the proposed regulation changes. When submitting electronic comments, please include your name and return address in your message, identify it as comments on the draft raptor propagation regulations, and submit your comments as an ASCII file. Do not use special characters or any encryption. If you do not receive a confirmation from the system that we have received your electronic comments, you can contact us directly at 703–358–1714. When submitting electronic or written comments, refer to the file number RIN 1018–AT60.

All comments on the proposed rule will be available for public inspection during normal business hours at Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, Arlington, Virginia -1610. The administrative record for this proposed rule is available, by appointment, during normal business hours at the same address. You may call 703–358–1825 to make an appointment to view the file.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would also withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation

For the reasons stated in the preamble, we propose to amend part 21, subpart C, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—[AMENDED]

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

Authority: 16 U.S.C. 703–712; Pub. L. 106–108; 16 U.S.C. 668a.

2. Revise § 21.30 as set forth below.

§ 21.30 Raptor propagation permits.

(a) *What is the legal basis for regulating raptor propagation?* The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*) prohibits any person from capturing from the wild, purchasing, bartering, selling, or offering to purchase, barter, or sell raptors (birds of prey) listed in § 10.13 of this subchapter B, or undertaking any other uses of these birds unless the uses are allowed by Federal regulation and the person has a permit to conduct the activity. These regulations cover all Falconiformes (kites, eagles, hawks, caracaras, and falcons) and all Strigiformes (owls) listed in § 10.13 of this subchapter B ("native" raptors) and apply to any person who holds for propagation one or more native raptors. Captive propagation of raptors is allowed to minimize the pressure on wild populations resulting from take from the wild for falconry. Wild-caught and captive-bred raptors of species protected under the MBTA are always under the stewardship of the U.S. Fish and Wildlife Service. They are not private property.

(b) *Do other Federal or State regulations affect raptor propagation activities?* Yes. Other regulations, such as those for the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Wild Bird Conservation Act, and State regulations, may affect propagation-related activities. In cases in which more than one set of regulations affect raptor propagation, the most restrictive requirements affecting the activity in question will apply.

(c) *Is captive propagation allowed for all raptor species?* No. The Bald and Golden Eagle Protection Act (16 U.S.C. 668) makes no provision for captive propagation of golden eagles or bald eagles. These species may not be used in captive propagation.

(d) *What facilities requirements for raptors are associated with raptor propagation permits?* In addition to the general conditions found in part 13 of this subchapter B, raptor propagation permits are subject to the following additional conditions:

(1) Your facilities may be adjacent to or adjoining other facilities you maintain for birds held under other permit types. However, birds held under your raptor propagation permit must be kept separate from birds held under other permit types.

(2) You must maintain any tethered raptor you possess under this permit in accordance with the facilities and standards requirements in § 21.29 unless you obtain a written exception to this requirement.

(3) For untethered raptors, your breeding facilities must be soundly constructed and entirely enclosed with wood, wire netting, or other suitable material that provides a safe, healthy environment.

(i) Your facilities must minimize the risk of injury by providing protection from predators, pets, and extreme weather conditions.

(ii) Your facilities must minimize the risk of raptor collision with interior or perimeter construction materials and equipment such as support poles, windows, wire netting, perches, or lights.

(iii) Your facilities must have observation windows or video cameras that will allow you to check on your birds with minimal disturbance to them.

(iv) Your facilities must have suitable perches and nesting sites, fresh water for bathing and drinking, fresh air ventilation, a source of light, a well-drained floor, and ready access for cleaning.

(v) The interior of your propagation facilities must be of materials suitable for thorough cleaning or disinfection.

(e) *Do I have to band raptors held for use in captive propagation that are not captive-bred?* Yes. Unless we specifically exempt a particular raptor, any raptor taken from the wild must be banded with a permanent, nonreusable band that we will provide.

(f) *Do I have to band captive-bred raptors?* Yes. Unless a particular nestling is specifically exempted, you must band every captive-bred raptor within 2 weeks of hatching with a numbered, seamless band placed on the nestling's leg. We will provide the necessary bands.

(1) You must use a band with an inside diameter that is small enough to prevent loss or removal of the band when the raptor is grown without causing serious injury to the raptor or damaging the band's integrity or one-piece construction.

(2) You may band a nestling with more than one band of different sizes if you cannot determine the proper size when you band the nestling. You must then remove all but the correctly sized band when the nestling is 5 weeks old, and you must return to us the band(s) you remove.

(3) You may request an exemption from the banding requirement for any

nestling or fledgling for which the band causes a problem. If you demonstrate that the band itself or the behavior of the bird in response to the band poses a hazard to the bird, we will exempt that bird from the banding requirement.

(g) *Are there restrictions on taking raptors or raptor eggs from the wild?* Yes. If your permit authorizes you to take raptors or raptor eggs from the wild, you must meet the following requirements:

(1) The State or foreign country in which the raptors or raptor eggs are taken must authorize you in writing to take the raptor(s) or raptor egg(s) from the wild for propagation purposes.

(2) You may not take a raptor listed in § 17.11(h) of this chapter as "endangered" or "threatened" from the wild without a permit under part 17 of this subchapter B.

(3) You must comply with all State laws in taking a raptor or raptor egg(s) from the wild.

(h) *May I transfer, purchase, sell, or barter raptors, raptor eggs, or raptor semen?* Yes, but only those from captive-bred and -raised birds.

(1) You may transfer, sell, or barter any lawfully possessed captive-bred raptor to another raptor propagation permittee, to a person with a valid State falconry permit, or to another person authorized to possess captive-bred raptors if the raptor is marked on the metatarsus by a seamless, numbered band we will supply.

(2) You may transfer, sell, or barter any lawfully possessed raptor egg or raptor semen produced by a bird held under your captive propagation permit, or under your falconry permit if you are using falconry birds in propagation, to another raptor propagation permittee.

(3) If you purchase from or barter with any person in a foreign country, that person must be authorized by the wildlife management authority of that country to sell or barter captive-bred raptors.

(4) If you transfer to, sell to, or barter with any person in a foreign country, that person must be authorized to possess, purchase, or barter captive-bred raptors by the wildlife management authority of the country. The wildlife management authority must certify in writing that the recipient is an experienced falconer or raptor propagator who is required to maintain any raptors in his or her possession under conditions that are comparable to the conditions under which a permittee must maintain raptors under §§ 21.29 or 21.30. No certification is required if the competent wildlife management authority itself is the recipient of captive-bred raptors for conservation purposes.

(5) You may not trade, transfer, purchase, sell, or barter a captive-bred raptor until it is 2 weeks old.

(6) You may not purchase, sell, or barter any raptor eggs or any raptors taken from the wild, any raptor semen collected from the wild, or any raptors hatched from eggs taken from the wild.

(i) *Do I need to document lawful possession of a bird held for captive propagation?* Yes. You must have a copy of a properly completed FWS Form 3–186A (Migratory Bird Acquisition and Disposition Report) for each bird you acquire or that is transferred to you. However, you do not have to submit or have a copy of an FWS Form 3–186A for raptors you produced by captive propagation if you keep the birds in your possession under your propagation permit.

(j) *Do I have to report the transfer of a propagation raptor to another permittee or to another permit I hold?* Yes. If you sell, trade, barter, or transfer a raptor held under your captive propagation permit, even if the transfer is to a falconry permit you hold, you must complete an FWS Form 3–186A and send it to us within 5 calendar days of the transfer.

(k) *May another person care for a propagation bird for me temporarily?* Yes. Another person who can legally possess raptors may care for a propagation raptor for you for up to 45 calendar days. The person must have a signed and dated statement from you authorizing the temporary possession, plus a copy of the FWS Form 3–186A that shows that you are the possessor of the bird. The statement must include information about the time period for which the other person will keep the bird, and about what he or she is allowed to do with it. The bird will remain on your raptor propagation permit. If the person who temporarily holds it for you is a falconer or a captive propagator, the bird will not be counted against his or her possession limit on birds held for falconry or propagation. However, the other person may not use the bird in falconry or in propagation. If you wish to have someone else care for a propagation raptor you hold for more than 45 days, or if you wish to let another person use the bird in falconry or captive propagation, you must transfer the bird to that person and report the transfer by submitting a completed FWS Form 3–186A.

(l) *May I produce hybrid raptors in captive propagation?* Yes. However, interspecific hybridization is authorized only if each bird produced is imprinted on humans by being hand-raised in isolation from the sight of other raptors from 2 weeks of age or it is surgically sterilized.

(m) *What do I do with the body of a raptor held for captive propagation that dies?* If a bird you hold for captive propagation dies, you must remove and return its band to us with an FWS Form 3–186A reporting the death of the bird. You must destroy the carcass of the bird immediately, unless you request authorization from us to retain possession of it temporarily. If you receive authorization to do so, you may transfer the carcass to any other person authorized by the Service to possess it (who may be you under another permit type), provided no money or other consideration is involved.

(n) *What do I do with nonviable eggs, nests, and feathers?* You may possess addled or blown eggs, nests, and feathers suitable for imping (replacing a damaged feather with a molted feather) from raptors held under permit and may transfer any of these items to any other person authorized by the Service to possess them, provided that no money or other consideration is involved.

(o) *May I release captive-bred raptors to the wild?* Yes, except that you may not release a raptor produced by interspecific hybridization to the wild. To release a captive-bred raptor, you must have written authorization from us and from the State agency that regulates such releases in the State in which you wish to release the bird. You should leave the captive-bred band on the bird.

(p) *What records of my captive propagation efforts do I have to keep?* You must maintain complete and accurate records of all operations, including the following, for at least 5 years from the date of expiration of your permit:

(1) The acquisition of raptors, eggs, or semen from sources other than production.

(i) Whether the stock was semen, eggs, or birds.

(ii) A description of the stock.

(A) The species, sex, and age of each (if applicable).

(B) The natal area (geographical breeding site or area that captive stock represents, *e.g.*, Colville River, Alaska; unknown; migrant taken in Maryland, etc.).

(C) The band number (if applicable).

(iii) How the stock was acquired, i.e., whether it was purchased, bartered, or transferred (include the purchase price or a description of any other consideration involved), or taken from the wild.

(iv) The day, month, and year the stock was acquired.

(v) The name, address, and permit number of the person from whom the stock was acquired or the location where the stock was taken from the wild.

(2) The disposition of raptors, eggs, or semen.

(i) Whether the stock was semen, eggs, or birds.

(ii) A description of the stock.

(A) The species, sex, and age of each (if applicable).

(B) The natal area (geographical breeding site or area that captive stock represents, e.g., Colville River, Alaska; unknown; migrant taken in Maryland, etc.).

(C) The band number of each (if applicable).

(iii) How you disposed of the stock, i.e., whether by sale, barter, or transfer (include the sale price or a description of any other consideration involved), escape, intentional release to the wild, or death.

(iv) The day, month, and year you disposed of the stock.

(v) To whom or where you disposed of the stock. Provide information on the name, address, and permit number of the purchaser, barterer, or transferee, or describe the location of any other disposition.

(3) The production and pedigree record for the male and the female in each propagation attempt.

(i) The species, natal area, and band number for each bird.

(ii) Whether insemination was natural, artificial, or a combination thereof.

(iii) How many eggs were laid and the laying date for each of them.

(iv) How many eggs hatched and the hatching date for each of them.

(v) How many young were raised to 2 weeks of age and the band number for each of them.

(q) *Do I have to provide reports on my captive propagation activities?* Yes. For determining take of raptors for captive propagation and reporting on propagation activities, you must submit an annual report to us by January 31 for the preceding year. For purposes of this reporting requirement, a year runs from January 1 through December 31. Your report must include the following information for each species you held under your captive propagation permit:

(1) The number of raptors you possessed for captive propagation as of December 31 (including the species, band number, sex, and hatch date of each raptor).

(2) The number of eggs laid by each female.

(3) The number of young raised to 2 weeks of age.

(4) The number of raptors you purchased, sold, bartered, received, or transferred (including the species, band number, sex, and age of each raptor), the date of the transaction, and the name, address, and permit number of each purchaser, seller, barterer, transferor, or transferee.

(5) The number of unused seamless bands of each size that you have in your possession.

(r) *May I use a bird held for captive propagation in falconry?* No. You may use raptors held under your captive propagation permit only for propagation. You must transfer a bird held for captive propagation to a falconry permit before you or another person may use it in falconry. If you transfer a bird held for captive propagation to another permit, you and the person to whom you transfer the bird must complete an FWS Form 3–186A and report the transfer.

(s) *May I train captive-bred offspring for use in falconry?* Yes. You may train any captive-bred progeny of raptors you hold under your permit. You may use falconry training or conditioning practices, such as the use of creance (tethered) flying, lures, balloons, or kites in training or conditioning these birds. Until they are 1 year old, you also may use captive-bred offspring in actual hunting as a means of training them. To do so, you will not need to transfer them to another permit type. You may not use them in hunting after their first year if they are held under your captive propagation permit. You may not hunt at any time with birds used in propagation.

(t) *Do I need a Federal permit to possess raptors for propagation?* Yes. You must have a Federal raptor propagation permit before you may capture from the wild, possess, transport, import, purchase, barter, or offer to sell, purchase, or barter any raptor, raptor egg, or raptor semen for propagation purposes. Your State also may require that you have a State permit.

(u) *How do I apply for a Federal raptor propagation permit?* Using FWS Form 3–200–12, you must submit your application for a raptor propagation permit to the appropriate Regional Director, to the attention of the Migratory Bird Permit Office. You can find addresses for the Regional Directors in 50 CFR 2.2. Your application must contain the general information and the certification required in § 13.12(a) of this subchapter, and the following information:

(1) A statement indicating the purpose(s) for which you seek to breed raptors and, if applicable, the scientific or educational objectives of your propagation efforts.

(2) A copy of your State permit authorizing raptor propagation.

(3) A statement fully describing your experience with raptor propagation or handling, including the names of the species with which you have worked and duration of your activities with each.

(4) A description of each raptor you possess at the time of your application and will use in propagation efforts, including the species, age (if known), sex (if known), date of acquisition, source, and raptor band number.

(5) A description of each raptor you possess for purposes other than raptor propagation, including the species, age (if known), sex (if known), date of acquisition, source, raptor band number, and purpose for which it is possessed.

(6) A description (including dimensions, drawings, and photographs) of the facilities and equipment you will use.

(7) A statement indicating whether you wish to take raptors or raptor eggs from the wild.

(v) *What are the criteria for issuing a permit?* When we receive an application completed as required in paragraph (u) of this section, we will decide whether we should issue a permit to you. We will consider the general criteria in § 13.21(b) of this subchapter B and the following factors:

(1) You must be at least 18 years old and have at least 2 full years of experience handling raptors.

(2) If you seek authority to propagate endangered or threatened species, you must have at least 5 years of experience handling raptors in a propagation program or programs. You may also need an endangered species permit to propagate threatened or endangered raptors. See §§ 17.21 and 17.22 of this subchapter B for permit requirements to propagate threatened or endangered raptors.

(3) You must have a propagation permit or other authorization for raptor propagation from your State, if your State requires such authorization.

(4) Your raptor propagation facilities must be adequate for the number and species of raptors to be held under your permit.

(5) For renewal of your Federal permit, when you seek the renewal you must provide documentation of your successful captive propagation efforts (young that reach fledging age) during the tenure of your permit.

(6) If you seek to take raptors or eggs from the wild to use in propagation efforts, we will consider the following in deciding whether to grant you

authority to take raptors or eggs from the wild:

(i) Whether issuing the permit would have a significant effect on any wild population of raptors.

(ii) Whether suitable captive stock is available.

(iii) Whether wild stock is needed to enhance the genetic variability of captive stock.

(w) *What procedures do I follow to update my captive propagation permit if I move?* If you move within your State or get a new mailing address, you must notify us within 10 days (see § 13.23(c) of this subchapter B). If you move to a new State, within 10 days you must inform both your former and your new Fish and Wildlife Service Migratory Bird Permit Offices of your address change. If you have new propagation facilities, you must provide information, pictures, and diagrams of them, and they may have to be inspected in accordance with Federal and/or State requirements.

(x) *For how long is my Federal captive propagation permit valid?* Your Federal permit will be valid for up to 5 years from when it is issued or renewed. It will expire on the same day as your State permit, unless your State permit is for a period longer than 5 years, or unless we amend, suspend, or revoke it.

(y) *What are the requirements for renewal of my captive propagation permit?* For us to renew your permit, you must provide documentation that you have had at least one young raised to fledging age within the last 5 years, or that the bird held for propagation has produced semen or eggs used in captive propagation efforts. This requirement applies to each bird held under the propagation permit, and both male and female birds held under this permit must be involved in the breeding program. However, if you can provide justification for allowing renewal of your propagation permit although you were unable to document that at least one young raised to fledging age, semen, or eggs were produced by each bird held under your propagation permit and used in captive propagation efforts, we will consider renewing your permit for an additional permit cycle. If, after your first renewal, you do not provide documentation of successful captive propagation or production of eggs or semen used in captive propagation within the next 5 years, we will not renew your permit again. If we do not renew your permit or do not allow continued possession of a bird or birds for captive propagation (including captive-bred raptors), within 30 days you must transfer any such bird to another raptor propagator or to a falconer, or release it to the wild (if release of the species is allowed by the state).

Dated: October 3, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–20596 Filed 10–13–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 051003254–5254–01; I.D. 092105C]

RIN 0648–AT88

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Control Date

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

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This notice announces that the South Atlantic Fishery Management Council (Council) is considering management measures to further limit participation or effort in the commercial fishery for snapper grouper species (excluding wreckfish) in the exclusive economic zone (EEZ) of the South Atlantic. Possible measures include individual fishing quotas (IFQ), days-at-sea (DAS), or other programs to further limit participation or effort. If such measures are established, the Council is considering October 14, 2005 as a possible control date.

FOR FURTHER INFORMATION CONTACT: Julie A. Weeder, 727–551–5753; fax 727–824–5308; e-mail *julie.weeder@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper grouper fishery in the EEZ off the southern Atlantic states is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

The Council previously established July 30, 1991 (56 FR 36052), as the control date for the snapper grouper fishery (excluding wreckfish), and April 23, 1997 (62 FR 22995), as the control date for the black sea bass pot segment of this fishery. If adopted, the proposed control date of October 14, 2005 would replace both of those control dates for the entire fishery (excluding wreckfish).

Many species in the South Atlantic snapper grouper fishery are or have been overfished or are undergoing overfishing. A limited access program for the commercial fishery was instituted in Amendment 8 to the FMP in 1998. Implementation of a program that further limits effort or participation in the commercial fishery for snapper grouper species (excluding wreckfish) in the EEZ would require preparation of an amendment to the FMP by the Council and publication of a proposed rule with a public comment period. NMFS' approval of the amendment and issuance of a final rule would also be required.

As the Council considers these management options, some fishermen who do not currently harvest snapper grouper, or harvest small quantities, may decide to begin or increase participation for the sole purpose of establishing or improving their record of commercial landings. When management authorities begin to consider implementation or expansion of a limited access management regime, this kind of speculative behavior is often responsible for a rapid increase in fishing effort in fisheries that are already fully developed or over developed. The original fishery problems, such as overcapitalization or overfishing, may be exacerbated by this increased participation.

In order to avoid this problem, if management measures to limit participation or effort in the fishery are determined to be necessary, the Council is considering October 14, 2005 as the control date. After that date, anyone entering the commercial fishery for snapper grouper species (excluding wreckfish) may not be assured of future participation in the fishery if a management regime is developed and implemented that limits the number of fishery participants.

Consideration of a control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the commercial fishery for snapper grouper species (excluding wreckfish). Fishermen are not guaranteed future participation in this fishery, regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. The Council may subsequently choose a different control date, or it may choose a management

regime that does not make use of such a date. The Council also may choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 7, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–20612 Filed 10–13–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 198
Friday, October 14, 2005

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–061–1]

Agricultural Inspector Uniform Allowance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Animal and Plant Health Inspection Service, USDA, is changing the colors of its employees' basic uniform to ensure our inspectors are easy to distinguish from personnel of other Federal agencies who are stationed at ports of entry. To offset the one-time cost to uniformed employees who must replace their existing uniforms, we are increasing, for one year only, our maximum uniform allowance rate for fiscal year 2006. We are publishing this notice in accordance with the civil service regulations regarding uniform allowances, which provide, among other things, that annual uniform allowances greater than $400 require public notice and comment.

DATES: We will consider all comments that we receive on or before December 13, 2005.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the "Search for Open Regulations" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS–2005–0082 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the "Advanced Search" function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–061–1, Regulatory Analysis and Development, PPD. APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–061–1.

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

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Martin Torrez, Resource Management Staff, PPQ, APHIS, 4700 River Road Unit 130, Riverdale, MD 20737–1232; (301) 734–7764.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture protects the health and value of American agriculture and natural resources by, among other things, conducting programs to prevent the introduction of exotic pests and diseases into the United States and conducting surveillance, monitoring, control, and eradication programs for pests and diseases in this country. These activities enhance agricultural productivity and competitiveness and contribute to the national economy and the public health.

To carry out the APHIS mission, our inspectors are stationed at ports of entry into the United States as well as at other locations where interstate trade in agricultural products and other Federal regulatory programs and initiatives are conducted. In 2003, many of our employees who historically had conducted inspections of imported articles at ports of entry were transferred to the Department of Homeland Security (DHS) under the Homeland Security Act of 2002. Despite the transfer of the majority of APHIS inspectors to DHS, there are still approximately 1,700 uniformed APHIS personnel stationed at ports of entry and other locations throughout the United States.

Uniformed APHIS personnel currently wear black pants, a white shirt, and a black tie. Most APHIS inspectors work in close proximity to inspectors from DHS's Transportation Security Administration (TSA), which has adopted a uniform with the same color scheme as APHIS'; the only distinguishing facet of the uniforms are the agency badges. Given the importance and uniqueness of the APHIS mission, we believe it is important to have a uniform that is clearly distinguishable from those of DHS–TSA. As such, we intend to change the basic inspector's uniform to one that has green pants and a tan shirt.

In accordance with 5 CFR 591.103, APHIS may pay its uniformed employees an allowance for a uniform not to exceed $400 a year, or furnish a uniform at a cost not to exceed $400 a year; APHIS does the former. The cost for the purchase of the new APHIS basic uniform, in addition to other annual uniform needs, exceeds the $400 allowance. In order to offset the one-time cost of changing the APHIS inspector uniform, we need to increase that allowance for fiscal year 2006 (which runs from October 1, 2005, through September 30, 2006) to $800. We believe $800 is a suitable amount to allow employees to purchase uniform components in sufficient minimum quantities to maintain a professional appearance. This action would result in additional costs to APHIS of approximately $680,000, which APHIS has accounted for in its budget for fiscal year 2006.

The specific items required for a basic uniform vary according to employee job function, and cost of certain items may vary according to gender. APHIS allows for variety in uniform components according to duty station (e.g., an inspector in North Dakota will have a different uniform wardrobe than an inspector in Florida). Following is a partial list of basic uniform components:

Type	Activities for which required	Minimum components	Cost each
Class A	Formal functions, including passenger inspections	Green dress pants	$52.57
		Long sleeve khaki service shirt	41.02
		Short sleeve khaki service shirt	38.18
		Green Tie	3.75
Class B	Cargo inspections, domestic field activities	Green cargo pants	57.46
		Polo shirt	34.82
Utility	May be used in combination with other parts of Class A and B uniforms for functions that do not involve direct contact with the public.	Green coveralls	56.16
		Cargo shorts	51.83
		Walking shoes	94.00 to 140.00
		Boots	199.00 to 209.00
Accessories	May be used in combination with other parts of Class A and B uniforms.	Wide-brimmed straw hat	61.04
		Rain jacket	36.89
		All weather overcoat	204.85
		Commando sweater	40.11
		Work belt	17.88
		Pair socks	6.10

The usual $400 annual uniform allowance is intended to assist employees in maintaining a neat professional appearance, and may be used to purchase whatever uniform components listed above that the employee may require. We are providing an additional $400 for fiscal year 2006 to cover the cost of building a new basic uniform, which could include a combination of items such as:

Class A shirts (2)	$ 82.04
Class A dress pants (2)	104.14
Class B cargo pants (1)	57.46
Class B cargo shorts (1)	51.83
Class B polo shirts (2)	69.64
Pair socks (5)	30.50
Total:	395.61

This change in uniform allowance would be effective for fiscal year 2006 only. Beginning fiscal year 2007, the uniform allowance would revert to $400.

This notice is intended to satisfy the requirements of 5 CFR 591.104(d), which requires that prior to adopting a uniform allowance that is greater than $400, a Federal agency must provide a justification for the allowance and make it available for public notice and comment.

Done in Washington, DC, this 7th day of October 2005.

Jennifer Cervantes-Eggers,

Acting Assistant Secretary for Administration, USDA.

[FR Doc. E5–5651 Filed 10–13–05; 8:45 am]

BILLING CODE 3410–34–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 13, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: On May 6, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 F.R. 23979) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

The following comments pertain to Accustamp.

Comments were received from three of the current contractors for these stamps. Two of the contractors claimed that the stamps the nonprofit agency will be providing under the Committee's program are made in China, as opposed to the stamps the contractors provide, which one contractor makes in the United States (U.S.) and the other contractor assembles in the U.S. from components made in Japan and China, and that the Committee should not permit its program to displace U.S. products with Chinese products. One contractor claimed that it has been a Government supplier of the stamps for over 35 years, and has become reliant on these sales, which constitute a significant minority of its total Government sales. The same contractor claimed the nonprofit agency's stamps do not meet Government specifications in four specific areas. That contractor claimed that U.S. workers should not be laid off to provide jobs for people with severe disabilities. Another contractor cited the continuing impact of Procurement List additions on its sales. Two contractors claimed, without providing supporting data, that this addition will impact either the small businesses that supply the products or the distributors who sell them.

Contrary to the contractors' claims, the nonprofit agency will be using its employees with severe disabilities to assemble and package the stamps in the U.S. from components made in Austria, which is a designated country under the Trade Agreements Act, 19 U.S.C. 2501 *et seq.* Like the contractor workers they may displace, the persons with severe disabilities who will produce the stamps are U.S. workers, but with an unemployment rate which is well above

other groups, so the Committee believes that creating jobs for them, which is the mission of the Committee's program, is justified in this situation.

The contractor which claimed a long-term reliance on Government sales of these stamps failed to provide the Committee with total sales data which would enable the Committee to assess the severity of impact of this Procurement List addition, despite being cautioned that the Committee would interpret a failure to provide data as an indication that the contractor did not consider the impact severe. As for this contractor's claim that the nonprofit agency's stamps do not meet Government specifications, the nonprofit agency has shown the Committee that its stamps do meet those specifications.

The cumulative impact of Procurement List additions over the past three years on the contractor which objected to these impacts does not reach the level which the Committee normally considers to be severe adverse impact. As the two contractors which alleged impact on their suppliers or distributors, respectively, failed to provide data to support their claims, the Committee is unable to assess the claims and is accordingly persuaded that these impacts cannot be severe.

The following material pertains to all of the items being added to the Procurement List.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. The action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products:

Product/name(s)/NSN(S): Accustamp
7510–01–207–3959—Refill Ink (Blue)
7510–01–207–3960—Refill Ink (Blue)
7510–01–207–3961—Refill Ink (Black)
7520–01–207–4118—Top Secret (Red)
7520–01–207–4150—C.O.D. (Red)
7520–01–207–4151—2000 plus 6 band number Stamp S–226
7520–01–207–4188—2000 plus R40 time stamp 12 hours—(Blue & Red)
7520–01–207–4190—Stamper 2000 6 Stamp Tray
7520–01–207–4194—Copy (Blue)
7520–01–207–4196—Approved (Blue)
7520–01–207–4202—Entered (Blue)
7520–01–207–4204—Priority (Red)
7520–01–207–4205—Expedite (Red)
7520–01–207–4206—Special (Red)
7520–01–207–4207—Posted (Red)
7520–01–207–4209—File (Red)
7520–01–207–4211—Draft (Black)
7520–01–207–4212—Copy for your Information (Red)
7520–01–207–4213—Official (Red)
7520–01–207–4216—Urgent (Red)
7520–01–207–4222—Original (Blue)
7520–01–207–4228—Cancelled (Blue)
7520–01–207–4231—Received (Red)
7520–01–207–4242—Unclassified (Red)

NPA: The Arbor School, Houston, Texas.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

G. John Heyer,
General Counsel.

[FR Doc. E5–5647 Filed 10–13–05; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

Comments Must Be Received on or Before: November 13, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services:

Service Type/Location: Basewide Custodial Services U.S. Naval Academy Complex, Annapolis, Maryland.
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland.
Contracting Activity: Naval Facilities Engineering Command, Chesapeake, Washington, DC.

Service Type/Location: Custodial Services, U.S. Geological Survey—Warehouse, 800 Ship Creek Avenue, USGS Storage Area, Anchorage, Alaska.
U.S. Geological Survey—Warehouse, Huffman Business Park, Building P 12100 Industry Way, Anchorage, Alaska.
NPA: Assets, Inc., Anchorage, Alaska.
Contracting Activity: U.S. Geological Survey—Oregon, Corvallis, Oregon.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services:

Service Type/Location: Janitorial/Custodial, Naval Reserve Readiness Command, Regional North Central, 715 Apollo Avenue, Minneapolis, Minnesota.
NPA: AccessAbility, Inc., Minneapolis, Minnesota.
Contracting Activity: Naval Facilities Engineering Command Contracts.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Kenton, Jacob Parrott, 707 N. Ida Street, Kenton, Ohio.
NPA: None currently authorized.
Contracting Activity: Department of the Army.
Service Type/Location: Janitorial/Custodial, U.S. Coast Guard, 2420 South Lincoln Memorial Parkway, Milwaukee, Wisconsin.
NPA: GWS, Inc., Waukegan, Wisconsin.
Contracting Activity: U.S. Coast Guard, Dept. of Transportation.

G. John Heyer,

General Counsel.

[FR Doc. E5–5648 Filed 10–13–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2004 Panel of the Survey of Income and Program Participation, Wave 7 Topical Modules.

Form Number(s): SIPP/CAPI Automated Instrument; SIPP 24705(L) Director's Letter; SIPP 24003 Reminder Card.

Agency Approval Number: 0607–0905.

Type of Request: Revision of a currently approved collection.

Burden: 148,028 hours.

Number of Respondents: 97,650.

Avg Hours per Response: 30 Minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 7 topical module interview for the 2004 Panel of the Survey of Income and Program Participation (SIPP). We are also requesting approval for a few replacement questions in the reinterview instrument. The core SIPP and reinterview instruments were cleared under Authorization No. 0607–0905.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of 3 to 4 years. The 2004 Panel is scheduled for four years and will include twelve waves of interviewing. All household members 15 years old or over are interviewed a total of twelve times (twelve waves), at 4-month intervals, making the SIPP a longitudinal survey.

The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 2004 Panel Wave 7 are Informal Caregiving, Retirement and Pension Plan Coverage, Annual Income and Retirement Accounts, and Taxes. The Informal Caregiving and Retirement and Pension Plan Coverage topical modules were previously conducted in the SIPP 2001 Panel Wave 7 instrument. The Annual Income and Retirement Accounts and Taxes topical modules were previously conducted in the SIPP 2004 Panel Wave 4 instrument. Wave 7 interviews will be conducted from February 2006 through May 2006.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture. The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time. Monetary incentives to encourage non-respondents to participate is planned for all waves of the 2004 SIPP Panel.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202) 395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: October 11, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–20594 Filed 10–13–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2007 Economic Census General Classification Report

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 13, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Scott P. Handmaker, Bureau of the Census, Room 1656, Building 3, Washington, DC 20233, and 301–763–7107 or e-mail at *Scott.P.Handmaker@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during non-decennial census years. The economic census, conducted under authority of Title 13 U.S.C., is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public.

This data collection, Form NC–99023, is designed to obtain detailed classification information in order to assign a North American Industry Classification System (NAICS) code for establishments that are unclassified and that are partially classified. The NC–99023 will be used to assign a detailed NAICS code to these establishments.

Accurate and reliable industry and geographic codes are critical to the Census Bureau statistical programs. New businesses are assigned industry classification by the Social Security Administration (SSA). However, many of these businesses cannot be assigned detailed industry codes because insufficient information is provided by respondents on Internal Revenue Service (IRS) Form SS–4 and are therefore unclassified.

Establishments that are currently partially classified could be misclassified in the Economic Census without a complete NAICS code. This refile operation will determine a complete and reliable classification in order to ensure the establishment is tabulated in the correct detailed industry for the 2007 Economic Census. For many of these establishments, this is the only chance to obtain this detailed industry classification. If these establishments are not mailed as part of the Economic Census economic data for these cases could be lost.

The failure to collect this classification information will have an adverse effect on the quality and usefulness of economic statistics and severely hamper the Census Bureau's ability to effectively classify establishments under NAICS in the Economic Census and other survey programs.

The Census Bureau is not requesting any economic data in this collection. The collection of this NAICS information will greatly reduce processing costs and ease reporting burden for the 2007 Economic Census data collection.

II. Method of Collection

The Census Bureau will select establishments to receive this survey from the Census Bureau's Business Register. The Census Bureau will mail the NC–99023 to those establishments selected from the mailing list. The NC–99023 will be used to assign a valid NAICS code. The NC–99023 will contain a list of codes and descriptions. Respondents are to select the activity which best describes their business by checking the box next to the activity listed or to describe their principal business activity if no box can be checked.

III. Data

OMB Number: Not Available.
Form Number: NC–99023.
Type of Review: Regular Review.
Affected Public: Businesses or Other For-profit Institutions, Small Businesses or Organizations, Non-profit Institutions, State or local governments.
Estimated Number of Respondents: 200,000.
Estimated Time per Response: 10 minutes.
Estimated Total Annual Burden Hours: 33,333.
Estimated Total Annual Cost: $813,659.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 U.S.C., Sections, 131, 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 11, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–20595 Filed 10–13–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090805A]

Incidental Take of Marine Mammals; Taking of Marine Mammals Incidental to Operation of a Low Frequency Sound Source by the North Pacific Acoustic Laboratory

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that a letter of authorization to take several species of marine mammals incidental to operation of a low frequency sound source by the North Pacific Acoustic Laboratory (NPAL) has been issued to the University of California San Diego, Scripps Institution of Oceanography (Scripps).

DATES: This letter of authorization is effective from October 15, 2005, through September 17, 2006.

ADDRESSES: The application and letter is available for review in the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, NMFS, (301) 713–2289, ext 128.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to operation of a low frequency sound source by NPAL were published on August 17, 2001 (66 FR 43442), and remain in effect until September 17, 2006.

Issuance of the letter of authorization to Scripps is based on findings made in the preamble to the final rule that the total takings by this project would result in only small numbers (as the term is defined in 50 CFR 216.103) of marine mammals being taken. In addition, the resultant incidental harassment would have no more than a negligible impact on the affected marine mammal stocks or habitats and would not have an unmitigable adverse impact on Arctic subsistence uses of marine mammals. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and Letter of Authorization (LOA), including monitoring and reporting requirements. This LOA is being renewed based on a review of the activity, completion of monitoring requirements and receipt of monitoring reports required by the LOA.

Dated: October 11, 2005.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–20611 Filed 10–13–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Information Systems Agency Senior Executive Service Performance Review Board

AGENCY: Department of Defense; Defense Information Systems Agency.

ACTION: Notice of Membership of the Defense Information Systems Agency Senior Executive Service Performance Review Board.

SUMMARY: This notice announces the appointment of members to the Defense Information Systems Agency (DISA) Performance Review Board. The Performance Review Board provides a fair and impartial review of Senior Executive Service (SES) performance appraisals and makes recommendations to the Director, Defense Information Systems Agency, regarding final performance ratings and performance awards for DISA SES members.

DATES: October 14, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Bazemore, Chief, Civilian Personnel Division, Defense Information Systems Agency, P.O. Box 4502, Arlington, Virginia 22204–4502, (703) 607–4400.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DISA career executives appointed to serve as members of the BISA Performance Review Board. Appointees will serve one year terms, effective upon publication of this notice.

MG Marilyn A. Quagliotti, USA, Vice Director, DISA, Chairperson.

Ms. Diann L. McCoy, Component Acquisition Executive, DISA, Member.

Mr. John I. Garing, Director for Strategic Planning and Information, DISA, Member.

Mr. John J. Penkoske, Jr., Director for Manpower, Personnel, and Security, DISA, Member.

Dated: October 6, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–20567 Filed 10–13–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice, as is necessary, to facilitate high educational standards and cost effective operations. The Board will be focusing primarily on the University's Command and Staff College, including its efforts to integrate Arabic language and culture into the curriculum for AY05/06. The Board will be apprised of recent developments at Marine Corps University, including progress on the construction efforts for the National Museum of the Marine Corps. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Wednesday, November 2, 2005, from 8 a.m. to 4 p.m. and on Thursday, November 3, 2005, from 8 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held at Marine Corps University in the Hooper Room. The address is: Marine Corps University, 2076 South Street, Quantico, Virginia 22134.

FOR FURTHER INFORMATION CONTACT: Mary Lanzillotta, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number 703–784–4037.

Dated: October 4, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–20564 Filed 10–13–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required

by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 14, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 11, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Application for Grants under Educational Opportunity Centers Programs.

Frequency: Once every four years.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden: Responses—400. *Burden Hours*—2,500.

Abstract: The application form is needed to conduct a national competition for the Educational Opportunity Centers Program for program year 2006–07. The program provides Federal financial assistance in the form of grants to institutions of higher education, public and private agencies and organizations, combinations of institutions, agencies and organizations and in exceptional cases secondary schools. These funds enable grantees to establish and operate projects designed to provide information regarding careers, financial aid and to provide academic assistance to individuals who desire to pursue a program of post secondary education, and to assist individuals in applying for admission to institutions that offer programs of post secondary education.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2899. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–20588 Filed 10–13–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; National Resource Centers (NRC) Program for Foreign Language and Area Studies or Foreign Language and International Studies Program and Foreign Language and Area Studies (FLAS) Fellowships Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.015A and 84.015B

Dates: Applications Available: October 14, 2005.

Deadline for Transmittal of Applications: See the chart listed under section IV. Application and Submission Information, 3. *Submission Dates and Times* (chart).

Deadline for Intergovernmental Review: See chart.

Eligible Applicants: (1) Institutions of higher education; and (2) Consortia of institutions of higher education that meet the eligibility requirements in the regulations for the NRC and FLAS programs.

Estimated Available Funds: The Administration has requested $28,950,000 for the NRC program and $29,129,500 for the FLAS program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for these programs.

Estimated Range of Awards: $192,000–$349,000 per year for the NRC program and $39,000–$377,000 per year for the FLAS program.

Estimated Average Size of Awards: $241,251 per year for the NRC program and $234,915 per year for the FLAS program.

Estimated Number of Awards: 120 NRC awards and 124 FLAS awards. We estimate that the 124 FLAS awards will yield 926 academic year fellowships and 635 summer fellowships.

Note: Information concerning the FLAS program subsistence allowance and institutional payment is provided elsewhere in this notice in section II Award Information.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The NRC program makes awards to institutions of higher education or consortia of these institutions for establishing or strengthening nationally recognized foreign language and area or international studies centers or programs. NRC awards are used to support undergraduate centers or comprehensive centers, which include undergraduate, graduate and professional school components.

The FLAS program provides allocations of fellowships to institutions of higher education or consortia of these institutions to assist meritorious students undergoing graduate training in modern foreign languages and related area or international studies.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for the NRC program (34

CFR 656.23(a)(4)) and for the FLAS program (34 CFR 657.22(a)(7)).

NRC Program Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Projects that include teacher training activities on the language, languages, area studies, or thematic focus of the center.

NRC Program Competitive Preference Priority: For FY 2006 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional ten points to an application, depending on the extent to which the application meets this priority.

This priority is:

Activities designed to demonstrate the quality of the center's or program's language instruction through the measurement of student proficiency in the less and least commonly taught languages.

Within the absolute priority and competitive preference priority, we are particularly interested in applications that address the following invitational priorities.

NRC Program Invitational Priorities: For FY 2006 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

NRC Invitational Priority 1

Activities designed to promote undergraduate language learning through two or more continuous years in the less or least commonly taught languages.

NRC Invitational Priority 2

Activities designed to increase the number of specialists trained in areas that are vital to United States national security, such as Islamic societies.

NRC Invitational Priority 3

Linkages with schools of education designed to improve teacher training in foreign languages or area or international studies with an emphasis on the less commonly taught languages and areas of the world where those languages are spoken.

NRC Invitational Priority 4

Collaboration with Title VI Language Resource Centers, Centers for International Business Education, and American Overseas Research Centers, with the objective of increasing the nation's capacity to train and produce Americans with advanced proficiency of the less and least commonly taught languages, along with an understanding of the societies in which those languages are spoken.

NRC Invitational Priority 5

Activities that expand and enhance outreach to K–12 constituencies.

FLAS Program Competitive Preference Priorities: For FY 2006 these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional ten points to an application, depending on the extent to which the application meets these priorities.

These priorities are:

FLAS Competitive Preference Priority 1

The Secretary will award up to five additional points to eligible applicants that plan to offer fellowships in the less and least commonly taught languages to students who are pursuing advanced level language proficiency.

FLAS Competitive Preference Priority 2

The Secretary will award up to five additional points to eligible applicants that plan to offer fellowships to master's degree students who are more likely to pursue government service or enter a professional field.

Program Authority: 20 U.S.C. 1122.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98 and 99. (b) The General Provisions for International Education Programs in 34 CFR part 655. (c) The regulations for the NRC program in 34 CFR part 656. (d) The regulations for the FLAS program in 34 CFR part 657.

Note: The regulations in 34 CFR part 79 apply to all applications except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $28,950,000 for the NRC program and $29,129,500 for the FLAS program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for these programs.

Estimated Range of Awards: $192,000–$349,000 per year for the NRC program and $39,000–$377,000 per year for the FLAS program.

Estimated Average Size of Awards: $241,251 per year for the NRC program and $234,915 per year for the FLAS program.

Estimated FLAS Program Subsistence Allowance: The subsistence allowance for an academic year 2006–2007 fellowship is $15,000, and the subsistence allowance for a summer 2007 fellowship is $2,500.

Estimated FLAS Program Institutional Payment: The institutional payment in lieu of tuition for an academic year 2006–2007 fellowship is $12,000, and the institutional payment in lieu of tuition for a summer 2007 fellowship is $4,000.

Estimated Number of Awards: 120 NRC awards and 124 FLAS awards. We estimate that the 124 FLAS awards will yield 926 academic year fellowships and 635 summer fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) Institutions of higher education; and (2) Consortia of institutions of higher education that meet the eligibility requirements in the program regulations for the NRC and FLAS programs.

2. *Cost Sharing or Matching:* These programs do not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via the Internet by downloading the package from the program Web site: *http://www.ed.gov/HEP/iegps.*

If you do not have access to the Internet, you may contact Carla White, International Education Programs Service, U.S. Department of Education, at (202) 502–7631 to request a paper copy of the package.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for these programs.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must

limit the narrative to the equivalent of no more than 40 pages for a single institution application or the equivalent of no more than 50 pages for a consortium application, using the following standards:

A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.

• Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman, Arial Narrow) will be rejected.

Section C of the application package provides instructions about the application narrative. The narrative must include your complete response to the selection criteria.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract; or the appendices.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: October 14, 2005.

Deadline for Transmittal of Applications: In light of the damage caused by Hurricanes Katrina and Rita we are establishing two separate deadlines for the submission of applications for grants under this competition to permit potential applicants affected by Hurricanes Katrina and/or Rita additional time to submit their applications. We are establishing a *General Deadline* for all applicants, and an *Extended Deadline* for potential applicants who have been affected by Hurricanes Katrina and/or Rita and are located in Louisiana, Texas, Alabama, Mississippi, and Florida. Specifically, the *Extended Deadline* applies only to: (1) institutions of higher education, SEAs, LEAs, non-profit organizations and other public or private organization applicants that are located in a federally-declared disaster area as determined by the Federal Emergency Management Agency (FEMA) (see *http://www.fema.gov/news/disasters.fema*) and that were adversely affected by Hurricanes Katrina and/or Rita, and (2) individual applicants who reside or resided, on the disaster declaration date, in a federally-declared disaster area as determined by FEMA (see *http://www.fema.gov/news/disasters.fema*) and were adversely affected by Hurricanes Katrina and/or Rita. These applicants must provide a certification in their application that they meet the criteria for submitting an application on the *Extended Deadline*, and be prepared to provide appropriate supporting documentation, if requested. If the applicant is submitting the application electronically, submission of the application serves as the applicant's attestation that they meet the criteria for submitting an application on the *Extended Deadline*.

The following chart provides the applicable deadlines for the submission of applications. If this program is subject to Executive Order 12372, the relevant deadline for intergovernmental review is also indicated in the chart.

	Transmittal of applications	Intergovernmental review
General Deadline:	11/14/05	1/13/06
Extended Deadline:	12/1/05	2/1/06

Applications for grants under this competition must be submitted by mail or hand delivery. For information (including dates and times) about how to submit your application by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: See chart.

4. *Intergovernmental Review:* These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for these programs.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under these programs must be submitted in paper format by mail or hand delivery.

a. *Submission of Applications by Mail.*

If you submit your application by mail (through the U.S. Postal Service or a commercial carrier, you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.015A and 84.015B), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.015A and 84.015B), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of the address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

b. Submission of Applications by Hand Delivery.

If you submit your application by hand delivery, you (or a courier service) must deliver the original and two copies of your application, by hand, on or

before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.015A and 84.015B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgement to you. If you do not receive the grant application receipt acknowledgement within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for a comprehensive center under the NRC program are from 34 CFR 656.21. In general, the Secretary awards up to 155 possible points for these criteria. However, if the criterion from section 656.21(j) is used, the Secretary awards up to 165 possible points. The maximum possible points for each criterion are shown in parentheses.

(a) *Program planning and budget.* (20 points) The Secretary reviews each application to determine—(1) The extent to which the activities for which the applicant seeks funding are of high quality and directly related to the purpose of the National Resource Centers Program (5 points); (2) The extent to which the applicant provides a development plan or timeline demonstrating how the proposed activities will contribute to a strengthened program and whether the applicant uses its resources and personnel effectively to achieve the proposed objectives (5 points); (3) The extent to which the costs of the proposed activities are reasonable in relation to the objectives of the program (5 points); and (4) The long-term impact of the proposed activities on the institution's undergraduate, graduate, and professional training programs (5 points).

(b) *Quality of staff resources.* (15 points) The Secretary reviews each application to determine—(1) The extent to which teaching faculty and other staff are qualified for the current and proposed Center activities and training programs, are provided professional development opportunities (including overseas experience), and participate in teaching, supervising, and advising students (5 points); (2) The adequacy of Center staffing and oversight arrangements, including outreach and administration and the extent to which faculty from a variety of departments, professional schools, and the library are involved (5 points); and (3) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly (5 points).

(c) *Impact and evaluation.* (25 points) The Secretary reviews each application to determine—(1) The extent to which the Center's activities and training programs have a significant impact on the university, community, region, and the Nation as shown through indices such as enrollments, graduate placement data, participation rates for events, and usage of Center resources; and the extent to which the applicant supplies a clear description of how the applicant will provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly (10 points); and (2) The extent to which the applicant provides an evaluation plan that is comprehensive and objective and that will produce quantifiable, outcome-measure-oriented data; and the extent to which recent evaluations have been used to improve the applicant's program (15 points).

(d) *Commitment to the subject area on which the Center focuses.* (10 points) The Secretary reviews each application to determine the extent to which the institution provides financial and other support to the operation of the Center, teaching staff for the Center's subject area, library resources, linkages with institutions abroad, outreach activities, and qualified students in fields related to the Center.

(e) *Strength of library.* (15 points) The Secretary reviews each application to determine—(1) The strength of the institution's library holdings (both print and non-print, English and foreign language) in the subject area and at the educational levels (graduate, professional, undergraduate) on which the Center focuses; and the extent to which the institution provides financial support for the acquisition of library materials and for library staff in the subject area of the Center (10 points); and (2) The extent to which research materials at other institutions are available to students through cooperative arrangements with other libraries or on-line databases and the extent to which teachers, students, and faculty from other institutions are able to access the library's holdings (5 points).

(f) *Quality of the Center's non-language instructional program.* (20 points) The Secretary reviews each application to determine—(1) The quality and extent of the Center's course offerings in a variety of disciplines, including the extent to which courses in the Center's subject matter are available in the institution's professional schools (5 points); (2) The extent to which the Center offers depth of specialized course coverage in one or more disciplines of the Center's subject area (5 points); (3) The extent to which the institution employs a sufficient number of teaching faculty to enable the Center to carry out its purposes and the extent to which instructional assistants are provided with pedagogy training; and (4) The extent to which interdisciplinary courses are offered for undergraduate and graduate students. The Secretary is assigning a total of ten points to factors (3) and (4).

(g) *Quality of the Center's language instructional program.* (20 points) The Secretary reviews each application to determine—(1) The extent to which the Center provides instruction in the languages of the Center's subject area and the extent to which students enroll in the study of the languages of the subject area through programs or instruction offered by the Center or other providers (5 points); (2) The extent to which the Center provides three or more levels of language training and the extent to which courses in disciplines other than language, linguistics, and literature are offered in appropriate foreign languages (5 points); (3) Whether sufficient numbers of language faculty are available to teach the languages and levels of instruction described in the application and the extent to which language teaching staff (including faculty and instructional assistants) have been exposed to current language pedagogy training appropriate for performance-based teaching (5 points); and (4) The quality of the language program as measured by the performance-based instruction being used or developed, the adequacy of resources for language teaching and

practice, and language proficiency requirements (5 points).

(h) *Quality of curriculum design.* (10 points) The Secretary reviews each application to determine—(1) The extent to which the Center's curriculum has incorporated undergraduate instruction in the applicant's area or topic of specialization into baccalaureate degree programs (for example, major, minor, or certificate programs) and the extent to which these programs and their requirements (including language requirements) are appropriate for a Center in this subject area and will result in an undergraduate training program of high quality (5 points); (2) The extent to which the Center's curriculum provides training options for graduate students from a variety of disciplines and professional fields and the extent to which these programs and their requirements (including language requirements) are appropriate for a Center in this subject area and result in graduate training programs of high quality; and (3) The extent to which the Center provides academic and career advising services for students; the extent to which the Center has established formal arrangements for students to conduct research or study abroad and the extent to which these arrangements are used; and the extent to which the institution facilitates student access to other institutions' study abroad and summer language programs. The Secretary is assigning a total of five points to factors (2) and (3).

(i) *Outreach activities.* (20 points) The Secretary reviews each application to determine the extent to which the Center demonstrates a significant and measurable regional and national impact of, and faculty and professional school involvement in, domestic outreach activities that involve—(1) Elementary and secondary schools (10 points); (2) Postsecondary institutions (5 points); and (3) Business, media, and the general public (5 points).

(j) *Degree to which priorities are served* (10 points): If, under the provisions of Sec. 656.23, the Secretary establishes competitive priorities for Centers, the Secretary considers the degree to which these priorities are being served.

The selection criteria for an undergraduate center under the NRC program are from 34 CFR 656.22. In general, the Secretary awards up to 155 possible points for these criteria. However, if the criterion from section 656.22(j) is used, the Secretary awards up to 165 possible points. The maximum possible points for each criterion are shown in parentheses.

(a) *Program planning and budget.* (20 points) The Secretary reviews each application to determine—(1) The extent to which the activities for which the applicant seeks funding are of high quality and directly related to the purpose of the National Resource Centers Program (5 points); (2) The extent to which the applicant provides a development plan or timeline demonstrating how the proposed activities will contribute to a strengthened program and whether the applicant uses its resources and personnel effectively to achieve the proposed objectives (5 points); (3) The extent to which the costs of the proposed activities are reasonable in relation to the objectives of the program (5 points); and (4) The long-term impact of the proposed activities on the institution's undergraduate training program (5 points).

(b) *Quality of staff resources.* (15 points) The Secretary reviews each application to determine—(1) The extent to which teaching faculty and other staff are qualified for the current and proposed Center activities and training programs, are provided professional development opportunities (including overseas experience), and participate in teaching, supervising, and advising students (5 points); (2) The adequacy of Center staffing and oversight arrangements, including outreach and administration and the extent to which faculty from a variety of departments, professional schools, and the library are involved (5 points); and (3) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly (5 points).

(c) *Impact and evaluation.* (25 points) The Secretary reviews each application to determine—(1) The extent to which the Center's activities and training programs have a significant impact on the university, community, region, and the Nation as shown through indices such as enrollments, graduate placement data, participation rates for events, and usage of Center resources; the extent to which students matriculate into advanced language and area or international studies programs or related professional programs; and the extent to which the applicant supplies a clear description of how the applicant will provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly (10 points); and (2) The extent to which the applicant provides an evaluation plan that is comprehensive and objective and that will produce quantifiable, outcome-measure-oriented data; and the extent to which recent evaluations have been used to improve the applicant's program (15 points).

(d) *Commitment to the subject area on which the Center focuses.* (10 points) The Secretary reviews each application to determine the extent to which the institution provides financial and other support to the operation of the Center, teaching staff for the Center's subject area, library resources, linkages with institutions abroad, outreach activities, and qualified students in fields related to the Center.

(e) *Strength of library.* (15 points) The Secretary reviews each application to determine—(1) The strength of the institution's library holdings (both print and non-print, English and foreign language) in the subject area and at the educational levels (graduate, professional, undergraduate) on which the Center focuses; and the extent to which the institution provides financial support for the acquisition of library materials and for library staff in the subject area of the Center (10 points); and (2) The extent to which research materials at other institutions are available to students through cooperative arrangements with other libraries or on-line databases and the extent to which teachers, students, and faculty from other institutions are able to access the library's holdings (5 points).

(f) *Quality of the Center's non-language instructional program.* (20 points) The Secretary reviews each application to determine—(1) The quality and extent of the Center's course offerings in a variety of disciplines (5 points); (2) The extent to which the Center offers depth of specialized course coverage in one or more disciplines of the Center's subject area (5 points); (3) The extent to which the institution employs a sufficient number of teaching faculty to enable the Center to carry out its purposes and the extent to which instructional assistants are provided with pedagogy training; and (4) The extent to which interdisciplinary courses are offered for undergraduate students. The Secretary is assigning a total of ten points to factors (3) and (4).

(g) *Quality of the Center's language instructional program.* (20 points) The Secretary reviews each application to determine— (1) The extent to which the

Center provides instruction in the languages of the Center's subject area and the extent to which students enroll in the study of the languages of the subject area through programs offered by the Center or other providers (5 points); (2) The extent to which the Center provides three or more levels of language training and the extent to which courses in disciplines other than language, linguistics, and literature are offered in appropriate foreign languages (5 points); (3) Whether sufficient numbers of language faculty are available to teach the languages and levels of instruction described in the application and the extent to which language teaching staff (including faculty and instructional assistants) have been exposed to current language pedagogy training appropriate for performance-based teaching (5 points); and (4) The quality of the language program as measured by the performance-based instruction being used or developed, the adequacy of resources for language teaching and practice, and language proficiency requirements (5 points).

(h) *Quality of curriculum design.* (10 points) The Secretary reviews each application to determine—(1) The extent to which the Center's curriculum has incorporated undergraduate instruction in the applicant's area or topic of specialization into baccalaureate degree programs (for example, major, minor, or certificate programs) and the extent to which these programs and their requirements (including language requirements) are appropriate for a Center in this subject area and will result in an undergraduate training program of high quality (5 points); and (2) The extent to which the Center provides academic and career advising services for students; the extent to which the Center has established formal arrangements for students to conduct research or study abroad and the extent to which these arrangements are used; and the extent to which the institution facilitates student access to other institutions' study abroad and summer language programs (5 points).

(i) *Outreach activities.* (20 points) The Secretary reviews each application to determine the extent to which the Center demonstrates a significant and measurable regional and national impact of, and faculty and professional school involvement in, domestic outreach activities that involve (1) Elementary and secondary schools (10 points); (2) Postsecondary institutions (5 points); and (3) Business, media and the general public (5 points).

(j) *Degree to which priorities are served* (10 points): If, under the provisions of Sec. 656.23, the Secretary establishes competitive priorities for Centers, the Secretary considers the degree to which these priorities are being served.

The selection criteria used in selecting institutions for an allocation of fellowships under the FLAS program are from 34 CFR 657.21. The Secretary evaluates an application for an allocation of fellowships on the basis of the quality of the applicant's Center or program. In general, the Secretary awards up to 140 possible points for these criteria. However, if priority criteria are used, the Secretary awards up to 150 possible points. The maximum possible points for each criterion are shown in parentheses.

(a) *Foreign language and area studies fellowships awardee selection procedures.* (15 points) The Secretary reviews each application to determine whether the selection plan is of high quality, showing how awards will be advertised, how students apply, what selection criteria are used, who selects the fellows, when each step will take place, and how the process will result in awards being made to correspond to any announced priorities.

(b) *Quality of staff resources.* (15 points) The Secretary reviews each application to determine—(1) The extent to which teaching faculty and other staff are qualified for the current and proposed activities and training programs, are provided professional development opportunities (including overseas experience), and participate in teaching, supervising, and advising students (5 points); (2) The adequacy of applicant staffing and oversight arrangements and the extent to which faculty from a variety of departments, professional schools, and the library are involved (5 points); and (3) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly (5 points).

(c) *Impact and evaluation.* (25 points) The Secretary reviews each application to determine—(1) The extent to which the applicant's activities and training programs have contributed to an improved supply of specialists on the program's subject as shown through indices such as graduate enrollments and placement data; and the extent to which the applicant supplies a clear description of how the applicant will provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly (20 points); and (2) The extent to which the applicant provides an evaluation plan that is comprehensive and objective and that will produce quantifiable, outcome-measure-oriented data; and the extent to which recent evaluations have been used to improve the applicant's program (5 points).

(d) *Commitment to the subject area on which the applicant or program focuses.* (10 points) The Secretary reviews each application to determine—(1) The extent to which the institution provides financial and other support to the operation of the applicant, teaching staff for the applicant's subject area, library resources, and linkages with institutions abroad (5 points); and (2) The extent to which the institution provides financial support to graduate students in fields related to the applicant's teaching program (5 points).

(e) *Strength of library.* (15 points) The Secretary reviews each application to determine—(1) The strength of the institution's library holdings (both print and non-print, English and foreign language) for graduate students; and the extent to which the institution provides financial support for the acquisition of library materials and for library staff in the subject area of the applicant (10 points); and (2) The extent to which research materials at other institutions are available to students through cooperative arrangements with other libraries or on-line databases (5 points).

(f) *Quality of the applicant's non-language instructional program.* (20 points) The Secretary reviews each application to determine—(1) The quality and extent of the applicant's course offerings in a variety of disciplines, including the extent to which courses in the applicant's subject matter are available in the institution's professional schools (10 points); (2) The extent to which the applicant offers depth of specialized course coverage in one or more disciplines on the applicant's subject area (5 points); (3) The extent to which the institution employs a sufficient number of teaching faculty to enable the applicant to carry out its purposes and the extent to which instructional assistants are provided with pedagogy training; and (4) The extent to which interdisciplinary courses are offered for graduate students. The Secretary is assigning a total of five points to factors (3) and (4).

(g) *Quality of the applicant's language instructional program.* (20 points) The Secretary reviews each application to

determine—(1) The extent to which the applicant provides instruction in the languages of the applicant's subject area and the extent to which students enroll in the study of the languages of the subject area through programs or instruction offered by the applicant or other providers (5 points); (2) The extent to which the applicant provides three or more levels of language training and the extent to which courses in disciplines other than language, linguistics, and literature are offered in appropriate foreign languages (5 points); (3) Whether sufficient numbers of language faculty are available to teach the languages and levels of instruction described in the application and the extent to which language teaching staff (including faculty and instructional assistants) have been exposed to current language pedagogy training appropriate for performance-based teaching (5 points); and (4) The quality of the language program as measured by the performance-based instruction being used or developed, the adequacy of resources for language teaching and practice, and language proficiency requirements (5 points).

(h) *Quality of curriculum design.* (20 points) The Secretary reviews each application to determine—(1) The extent to which the applicant's curriculum provides training options for graduate students from a variety of disciplines and professional fields and the extent to which these programs and their requirements (including language requirements) are appropriate for an applicant in this subject area and result in graduate training programs of high quality (10 points); (2) The extent to which the applicant provides academic and career advising services for students (5 points); and (3) The extent to which the applicant has established formal arrangements for students to conduct research or study abroad and the extent to which these arrangements are used; and the extent to which the institution facilitates student access to other institutions' study abroad and summer language programs (5 points).

(i) *Priorities* (10 points): If one or more competitive priorities have been established under section 657.22, the Secretary reviews each application for information that shows the extent to which the Center or program meets these priorities.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. For the NRC and FLAS programs, final and annual reports must be submitted into the Evaluation, Exchange, Language, International, and Area Studies online reporting system.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the objective for the NRC and FLAS programs is to support the maintenance of a U.S. higher education system able to produce experts in less commonly taught languages and area studies who are capable of contributing to the needs of the U.S. Government, academic and business institutions.

The Department will use the following measures to evaluate its success in meeting this objective.

NRC Performance Measure 1: Percentage of National Resource Center Ph.D. graduates who are employed in higher education, government, or national security.

NRC Performance Measure 2: Percentage of critical languages taught as reflected in the list of critical languages referenced in title VI of the Higher Education Act of 1965, as amended.

FLAS Performance Measure 1: The average competency score of Foreign Language and Area Studies Fellowships recipients at the end of one full year of instruction (post test) minus the average competency score at the beginning of the year (pre test).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carla White, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7631 or via Internet: *OPE_NRC–FLAS@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: October 11, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–20625 Filed 10–13–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Student Assistance General Provisions, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Pell Grant, and Leveraging Educational Assistance Partnership Programs

AGENCY: Department of Education.

ACTION: Notice extending institutional and applicant filing and reporting deadlines.

SUMMARY: The Secretary announces an extension of the deadline dates for specific filing and reporting activities, including those published in the **Federal Register** on March 22, 2005, (70 FR 14450), April 13, 2005 (70 FR

19423), and June 7, 2005, (70 FR 33134). The Secretary takes this action as a result of the extensive damage and disruption in the southern United States caused by Hurricane Rita. The new dates apply only to (1) institutions or third-party servicers that are located in a federally-declared disaster area and that were adversely affected by Hurricane Rita, and (2) applicants that are adversely affected by Hurricane Rita. The Secretary notes that the deadline extensions in this notice supplement the extensions published in the **Federal Register** on September 9, 2005, (70 FR 53640) for parties adversely affected by Hurricane Katrina.

In addition, the Secretary reminds affected parties that additional guidance and regulatory relief are provided in Dear Colleague Letter GEN–04–04, available at: *http://www.ifap.ed.gov/dpcletters/GEN0404.html.*

SUPPLEMENTARY INFORMATION: The Secretary announces new deadlines, as described below.

Activities Related to Institutional Reporting

FISAP Filing Deadline: For an affected institution or third-party servicer that is unable to meet the previously published deadline of September 30, 2005, the Secretary extends to December 1, 2005, the date by which the institution's FISAP (Fiscal Operations Report for 2004–2005 and Application to Participate for 2006–2007) must be submitted. If the institution or servicer cannot meet the extended deadline, it must contact the Campus-Based Call Center at 1–877–801–7168, or by e-mail at *CBFOB@ed.gov.* An institution or servicer that submits a FISAP after September 30, 2005, must maintain documentation of the hurricane-related reason why it did so.

Audit Submission Deadline: For an affected institution or third-party servicer that is unable to submit its annual compliance audit and/or audited financial statements, the Secretary extends by 90 days the date by which the institution or servicer must otherwise submit those audits as provided in 34 CFR 668.23. If the institution or servicer cannot meet the extended deadline, it must contact the appropriate School Participation Team. Institutions or servicers in Texas and Louisiana should contact the Department of Education's Dallas Regional Office at (214) 661–9490, or by e-mail at *jackie.shipman@ed.gov.* An institution or servicer that submits its annual audit after the deadline in 34 CFR 668.23 must maintain documentation of the hurricane-related reason why it did so.

2004–2005 Federal Pell Grant Reporting Deadline: For an affected institution or third-party servicer that is unable to meet the previously published deadline of September 30, 2005, the Secretary grants administrative relief and extends to December 1, 2005, the date by which the institution or servicer must report Federal Pell Grant payments (and adjustments) for the 2004–2005 award year to the Common Origination and Disbursement (COD) System. If the institution or servicer cannot submit the records by the extended deadline, it must contact the COD School Relations Center at 1–800–4PGRANT (1–800–474–7268), or by e-mail at *CODSupport@acs-inc.com.* An institution or servicer that submits Pell Grant payment information for the 2004–2005 award year after September 30, 2005, must maintain documentation of the hurricane-related reason why it did so.

Submission of Federal Pell Grant Disbursement Records: For the 2004–2005 and 2005–2006 award years, the Secretary will not enforce the current 30-day reporting requirement against an affected institution or third-party servicer that is unable to submit Federal Pell Grant disbursement records to the COD System. Instead, the institution or servicer has until December 1, 2005, to submit these records. If the institution or servicer cannot submit the records by the extended deadline, it must contact the COD School Relations Center at 1–800–4PGRANT (1–800–474–7268), or by e-mail at *CODSupport@acs-inc.com.* An affected institution or servicer that does not submit Pell Grant payment information within the 30-day timeframe must maintain documentation of the hurricane-related reason why it did so.

Submission of Federal Direct Loan Records: The Secretary will not enforce the current 30-day requirement against an affected institution or third-party servicer that is unable to submit William D. Ford Federal Direct Loan (Direct Loan) promissory notes, loan origination records, and disbursement records (including adjustments) to the COD System. Instead, the institution or servicer has until December 1, 2005, to submit these records. If an institution or servicer cannot submit the records by the extended deadline, it must contact the COD School Relations Center at 1–800–848–0978, or by e-mail at *CODSupport@acs-inc.com.* An affected institution or servicer that does not submit Direct Loan information within the current 30-day timeframe must maintain documentation of the hurricane-related reason why it did so.

Activities Related to Applicant Filing

FAFSA Correction Deadline: For an affected applicant for the 2004–2005 award year, the Secretary extends from September 15, 2005, to December 1, 2005, the date by which the Department's Central Processing System (CPS) must have received the following items:

- Paper corrections (including address changes and changes of institutions) made using a SAR;
- Electronic corrections (including address changes and changes of institutions) made from FAFSA on the Web, FAA Access to CPS Online, or EDE;
- Changes to mailing or e-mail addresses, changes of institutions, and requests for a duplicate SAR made by phone to the Federal Student Aid Information Center; and
- Paper signature pages and electronic signatures.

Activities Related to Documents Received by an Institution

Receipt of SARs and ISIRs: For an affected applicant, institution, or third-party servicer, the Secretary extends from September 23, 2005, to December 1, 2005, the date by which the institution or servicer must have received a SAR from a student, or an ISIR from the Department, for the student to be considered for a Federal Pell Grant for the 2004–2005 award year. An institution or servicer that pays Federal Student Aid on a SAR or ISIR that was received after September 23, 2005, must maintain documentation of the hurricane-related reason why the SAR or ISIR was not received by that date.

Receipt of Verification Documents: The Secretary extends from September 23, 2005, to December 1, 2005, the date by which an institution or third-party servicer must have received all requested verification documents to consider an applicant for Federal Student Aid for the 2004–2005 award year. An institution or servicer that pays Federal Student Aid based on verification documents received after September 23, 2005, must maintain documentation of the hurricane-related reason why those documents were not received by that date.

FOR FURTHER INFORMATION CONTACT: For general questions, John Kolotos, U.S. Department of Education, 400 Maryland Avenue, SW., UCP, room 113F2, Washington, DC 20202. Telephone: (202) 377–4027, FAX: (202) 275–4552, or by e-mail: *john.kolotos@ed.gov.*

For other questions or requests for extensions, contact the appropriate call

center as noted elsewhere in this notice or the Customer Service Call Center at 1–800–433–7327.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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Program Authority: 20 U.S.C. 1070a, 1070b–1070b–4, 1070c–1070c–4, 1071–1087–2, 1087a–1087j, 1087aa–1087ii, 1094, and 1099c; 42 U.S.C. 2751–2756b.

(Catalog of Federal Domestic Assistance numbers: 84.007 Federal Supplemental Educational Opportunity Grant (FSEOG) Program; 84.032 Federal Family Education Loan (FFEL) Programs; 84.033 Federal Work-Study (FWS) Program; 84.038 Federal Perkins (Perkins) Loans; 84.063 Federal Pell Grant (Pell) Program; 84.069 Leveraging Educational Assistance Partnership (LEAP) Programs; and 84.268 William D. Ford Federal Direct Loan (Direct Loan) Programs)

Dated: October 11, 2005.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 05–20623 Filed 10–13–05; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE AND TIME: Tuesday, October 25, 2005, 10 a.m.–2:30 p.m.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 1100, Washington, DC 20005. (Metro Stop: Metro Center.)

AGENDA: The Commission will receive the following reports: Title II Requirements Payments Update; Voluntary Voting System Guidelines Update; and updates on other administrative matters. The Commission will receive presentations on the Timely Return of Voter Registration Applications.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 05–20741 Filed 10–12–05; 3:42 pm]

BILLING CODE 6820–KF–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6668–4]

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 the **Federal Register** dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20040468, ERP No. D–AFS–L65470–ID, Meadows Slope Wildland Fire Protection Project, Proposal to Create and Maintain a Fuelbreak of Reduced Crown Fire Hazard, Payette National Forest, New Meadows, Ranger District, Adams and Valley Counties, ID

Summary: EPA expressed environmental concerns about potential adverse effects of management activities on water quality, fish habitat and soil productivity. Rating EC2.

EIS No. 20050081, ERP No. D–AFS–L65477–OR, B&B Fire Recovery Project, Proposed Harvest of Fire-Killed Trees, Reduction of Fuels, Planting of Tree, Deschutes National Forest, Sister Ranger District, Jefferson and Deschutes Counties, OR

Summary: EPA expressed environmental concerns about the potential long term impacts of salvage logging to surface water quality, especially temperature, and aquatic habitat from increased sediment delivery to streams. Rating EC2.

EIS No. 20050250, ERP No. D–AFS–L65489–OR, Ashland Forest Resiliency Project, To Recover from Large-Scale High-Severity Wild Land Fire, Upper Bear Analysis Area, Ashland Ranger District, Rogue River-Siskiyou National Forest, Jackson County, OR

Summary: EPA expressed environmental concerns about the potential impacts of sediment delivery to streams that feed into the City of Ashland's drinking water supply, and potential impacts from large wood debris to streams within and downstream of the proposed project. Rating EC2.

EIS No. 20050297, ERP No. D–SFW–J65447–WY, Bison and Elk Management Plan, Implementation, National Elk Refuge/Grand Teton National Park/John D. Rocefeller, Jr. Memorial Parkway, Teton County, WY

Summary: EPA has no objection to the proposed action. Rating LO.

EIS No. 20050299, ERP No. D–SFW–K64026–CA, San Diego Bay National Wildlife Refuge Comprehensive Conservation Plan, Implementation, Sweetwater Marsh and South San Diego Units, San Diego, County, CA

Summary: EPA has no objection to the proposed action. Rating LO.

EIS No. 20050138, ERP No. DS–NIH–B81009–MA, National Emerging Infectious Disease Laboratories, Additional Information on Two Alternatives, Construction of National Biocontainment Laboratory, BioSquare Research Park, Boston University Medical Center Campus, Boston, MA

Summary: EPA expressed environmental concerns about the air quality, risk assessment, and environmental justice. Rating EC2.

FINAL EISs

EIS No. 20040271, ERP No. F–FHW–B40087–VT, VT 9/100 Transportation Improvement Study (NH–010–1(33), In the Towns of Wilmington and West Dover, Federal Permits and Approvals, NPDES Permit and COE Section 10 and 404 Permits. Windham County, VT

Summary: EPA continues to have environmental concerns about the analysis of vernal pool resources and indirect/cumulative wetland impacts.

EIS No. 20040502, ERP No. F–FHW–B40089–CT, CT–2/2A/32 Transportation Improvement Study, Construction, Funding, Coast Guard Bridge Permit, NPDES Permit, COE

Section 10 and 404 Permit, New London County, CT

Summary: EPA continues to have environmental concerns about ground and surface water resources, impacts to wetlands and secondary impacts. However, EPA supports the selection of the preferred alternative.

EIS No. 20050191, ERP No. F–AFS–L65470–ID, Meadows Slope Wildland Fire Protection Project, Proposes to Create and Maintain a Fuelbreak of Reduced Crown Fire Hazard, Payette National Forest, New Meadows Rangers District, Adams and Valley Counties, ID

Summary: EPA continues to express environmental concern about water quality impacts associated with sediment in low gradient streams.

EIS No. 20050258, ERP No. F–AFS–L65477–OR, B&B Fire Recovery Project, Proposed Harvest of Fire-Killed Trees, Reduction of Fuels, Planting of Tree, Deschutes National Forest, Sisters Ranger District, Jefferson and Deschutes Counties, OR

Summary: EPA continued to have environmental concerns about the long term impacts of salvage logging to water quality and aquatic habitat from sediment delivery to streams.

EIS No. 20050307, ERP No. F–IBR–K64023–CA, Battle Creek Salmon and Steelhead Restoration Project, To Address New Significant Information, Habitat Restoration in Battle Creek and Tributaries, License Amendment Issuance, Implementation, Tehama and Shasta Counties, CA

Summary: EPA is supportive of efforts to restore salmonid habitat to facilitate population growth and recovery, and has no objection to the proposed action.

EIS No. 20050312, ERP No. F–NRC–B06005–CT, Generic-License Renewal of Nuclear Plants for the Millstone Power Station, Units 2 and 3, Supplement 22 to NUREG–1437, Implementation, New London County, CT

Summary: EPA continues to have environmental concerns about the entrainment and impingement of fish and other aquatic organisms, heat shock, and the assessment of cumulative environmental impacts.

EIS No. 20050326, ERP No. F–AFS–K65278–CA, Burlington Ridge Trails Project, To Eliminate, Reconstruct/or Reroute Unsound Trail Sections, Tahoe National Forest, Yuba River Ranger District, Camptonville, Nevada County, CA

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050338, ERP No. F–FHW–F40428–OH, OH–823, Portsmouth Bypass Project, Transportation Improvements, Funding and U.S. Army COE Section 404 Permit, Appalachian Development Highway, Scioto County, OH

Summary: EPA continues to have environmental concerns about ecosystem fragmentation, forest losses, relocation impacts, and requested that these impacts be further mitigated.

EIS No. 20050345, ERP No. FS–BLM–K67038–NV, Ruby Hill Mine Expansion—East Archimedes Project, Extension of Existing Open Pit and Expansion of Two Existing Waste Rock Disposal Areas, Plan-of-Operations Permit, Eureka County, NV

Summary: EPA recommended that BLM analyze potential long-term heap leach draindown scenarios and include the full cost of long-term treatment in the reclamation/closure bond.

Dated: October 11, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–20615 Filed 10–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6668–3]

Environmental Impacts 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 10/03/2005 Through 10/07/2005 Pursuant to 40 CFR 1506.9.

EIS No. 20050410, Draft EIS, COE, FL, Central and Southern Florida Project, Comprehensive Everglades Restoration Plan, Implementation, Everglades Agricultural Area Storage Reservoirs, Palm Beach County, FL, Comment Period Ends: 11/21/2005, Contact: Janet Cushing 904–232–2259. The above EIS should have appeared in FR on 10/07/05. The comment period is calculated from the 10/7/2005 FR.

EIS No. 20050418, Final EIS, AFS, CA, Bald Mountain Project, Proposes to Harvest Trees Using Group and Individual Trees Selection Methods, Feather River Ranger District, Plumas National Forest, Plumas and Butte Counties, CA, Wait Period Ends: 11/14/2005, Contact: Katherine Worn 530–534–6500

EIS No. 20050419, Final EIS, AFS, MT, Middle East Fork Hazardous Fuel Reduction Project, Implementation of Three Alternatives, Bitterroot National Forest, Sula Ranger District, Ravalli County, MT, Wait Period Ends: 11/14/2005, Contact: Sandrah Mack 406–821–1251

EIS No. 20050420, Final EIS, IBR, NV, Humboldt Project Conveyance, Transferring 83, 530 Acres from Federal Ownership to the Pershing County Water Conservation District (PCWCD), Pershing and Lander Counties, NV, Wait Period Ends: 11/14/2005, Contact: Caryn Huntt DeCarlo 775–884–8352

EIS No. 20050421, Draft EIS, HUD, NY, Ashburton Avenue Master Plan and Urban Renewal Plan/Mulford Hope VI Revitalization Plan, Development, Implementation, Yonkers City, Westchester County, NY, Comment Period Ends: 11/28/2005, Contact: Stephen Whetstone 914–337–6650

EIS No. 20050422, Draft Supplement, COE, AR, Fourche Bayou Basin Project, 1,750 Acre Bottomland Acquisition with Nature Appreciation Facilities, Development, Funding, City of Little Rock, Pulaski County, AR, Comment Period Ends: 11/28/2005, Contact: Jim Ellis 501–324–5629

EIS No. 20050423, Final EIS, BLM, NV, Sloan Canyon National Conservation Area, Resource Management Plan, Implementation, Cities of Las Vegas and Henderson, Clark County, NV, Wait Period Ends: 11/14/2005, Contact: Charles Carroll 702–515–5291

EIS No. 20050424, Draft EIS, NPS, CA, Furnace Creek Water Collection System, Reconstruction, Death Valley National Park, Implementation, Inyo County, CA, Comment Period Ends: 12/12/2005, Contact: Linda Greene 760–786–3253

EIS No. 20050425, Draft EIS, BLM, CA, Southern Diablo Mountain Range and Central Coast of California Resource Management Plan, Several Counties, CA, Comment Period Ends: 01/11/2006, Contact: Sky Murphy 831–630–5039

EIS No. 20050426, Final EIS, FTA, CA, Mid-City/Westside Transit Corridor Improvements, Wilshire Bus Rapid Transit and Exposition Transitway, Construction and Operation, Funding, Section 404 Permit, Los Angeles County, CA, Wait Period Ends: 11/14/2005, Contact: Ray Sukys 415–744–3115

EIS No. 20050427, Draft Supplement, FTA, WA, Central Link Light Rail Transit Project (Sound Transit)

Construction and Operation of the North Link Light Rail Extension, from Downtown Seattle and Northgate, Updated Information on Refined Design Concepts, Funding, Right-of-Way and US Army COE Section 404 Permits, King County, WA, Comment Period Ends: 11/30/2005, Contact: John Witmer 206–220–7954

EIS No. 20050428, Draft EIS, FRC, CA, Long Beach Liquefied Natural Gas (LNG) Import Project, Construction and Operation of a LNG Receiving Terminal and Associated Facilities, US Army COE 10 and 404 Permits, Long Beach, CA, Comment Period Ends: 12/08/2005, Contact: Thomas Russo 1–866–208–3372

Amended Notices

EIS No. 20050328, Draft EIS, FHW, LA, US 90 Corridor, Proposed Interstate Highway 49 (I49) South Improvement from Raceland to the Davis Pond Diversion Canal, Section of Independent Utility 1 (SIU 1), Lafourche and St. Charles Parishes, LA, Comment Period Ends: 12/31/2005, Contact: William C. Farr 225–757–7615 Revision of FR Notice Published 08/12/2005; Comment Period Extended from 9/30/2005 to 12/31/2005.

Dated: October 11, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–20619 Filed 10–13–05; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[E–Docket ID No. ORD–2005–0022; FRL–7983–9]

Notice of a Scientific Peer-Review Meeting to Review the Draft Document: Approaches for the Application of Physiologically-Based Pharmacokinetic (PBPK) Models and Supporting Data in Risk Assessment (EPA/600/R–05/043A)

AGENCY: Environmental Protection Agency.

ACTION: Notice of external peer-review panel meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that Versar Inc., an EPA contractor for external scientific peer review, will convene a panel of experts and organize and conduct an independent external peer-review workshop to review the draft report, "Approaches for the Application of Physiologically-Based Pharmacokinetic (PBPK) Models and Supporting Data in Risk Assessment" (EPA/600/R–05/043A), which was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. Versar, Inc. invites the public to register to attend this workshop as observers. In addition, Versar, Inc. invites the public to give oral and/or provide written comments at the workshop regarding the draft document under review. The draft document and EPA's peer-review charge are available primarily via the Internet on NCEA's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea*. In preparing a final report, EPA will consider Versar, Inc.'s report of the comments and recommendations from the external peer-review workshop. In addition to the workshop announced today, EPA previously published a **Federal Register** notice (70 FR 43692) announcing a separate process for public comment on the draft document on July 28, 2005 and a second **Federal Register** notice (70 FR 48950) announcing a 45-day extension (closing October 14, 2005) of the public comment period.

DATES: Versar, Inc. will hold the peer-review workshop from November 10, 2005, to November 11, 2005. On the first day, the meeting is scheduled to begin at 8:30 a.m. and end at 5 p.m., Eastern Daylight Time. The public may attend the peer-review workshop on November 10, 2005, as observers. In addition, members of the public in attendance at the workshop will be allowed to make brief (no longer than five minutes) oral statements at the commencement of the meeting. The second day of the workshop is scheduled from 8:30 a.m. to 12:30 p.m., Eastern Daylight Time. This second day will be not be open to the public and is meant to provide time for the peer-reviewers to begin drafting their comments on the draft report.

ADDRESSES: The external peer-review panel meeting will be held at the Hyatt Arlington located at 1325 Wilson Boulevard, Arlington, VA, 22209. The EPA contractor, Versar, Inc., is organizing, convening, and conducting the peer-review panel meeting. To attend the meeting, register by November 4, by calling Ms. Amanda Jacob of Versar, Inc., 6850 Versar Center, Springfield, VA, 22151, at 703–750–3000 ext. 260, or via e-mail at *AJacob@versar.com*, or by sending a facsimile to 703–642–6954. Interested parties may also register on-line at: *http://epa.versar.com/pbpk*. Space is limited, and reservations will be accepted on a first-come, first-served basis. At the time of your registration for the meeting, please indicate if you intend to make an oral statement during the public comment period on the first day of the meeting.

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and logistics for the peer review meeting should be directed to Ms. Amanda Jacob, Versar, Inc., 6850 Versar Center, Springfield, VA, 22151; telephone: 703–750–3000 ext. 260; facsimile: 703–642–6954; e-mail: *AJacob@versar.com*. If you have questions about the document, please contact Technical Information Staff, NCEA, U.S. Environmental Protection Agency, Washington, DC 20460; telephone: 202–564–3261; facsimile: 202–565–0050; or e-mail: *NCEADC.Comment@epa.gov*.

SUPPLEMENTARY INFORMATION: On July 28, 2005, EPA published a **Federal Register** notice (70 FR 43692) that announced a 30-day public comment period through August 29, 2005, for EPA's draft report, "Approaches for the Application of Physiologically-Based Pharmacokinetic (PBPK) Models and Supporting Data in Risk Assessment" (EPA/600/R–05/043A). EPA published a second notice in the **Federal Register** on August 22, 2005 (70 FR 48950) that extended the public comment period for 45 days from August 29, until October 14, 2005. On July 28, 2005, the draft document was made publicly available on NCEA's Web site for review and comment. An electronic version of the public docket is available through EPA's electronic public docket and comment system, E-Docket. To view comments, go to *http://www.epa.gov/edocket/*, select "search," then key in the docket identification number, ORD–2005–0022. In the July 28, 2005, notice, EPA also announced that a subsequent **Federal Register** notice would announce the date and location of a workshop for independent external peer review of this draft document. Today's notice provides information on that external peer-review workshop.

The purpose of the draft document is to describe some approaches for the use of physiologically-based pharmacokinetic (PBPK) models in risk assessment. PBPK models represent an important class of dosimetry models that are useful for predicting internal dose at target organs for risk assessment applications. Dose-response relationships that appear unclear or confusing at the administered dose level can become more understandable when expressed on the basis of internal dose of the chemical. To predict internal dose level, PBPK models use pharmacokinetic data to construct mathematical representations of

biological processes associated with the absorption, distribution, metabolism, and elimination of compounds. With the appropriate data, these models can be used to extrapolate across species and exposure scenarios, and address various sources of uncertainty in risk assessments. This report addresses the following questions: (1) Why do risk assessors need PBPK models; (2) How can these models be used in risk assessments; and (3) What are the characteristics of acceptable PBPK models for use in risk assessment?

Dated: October 6, 2005.

Peter Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 05–20600 Filed 10–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7983–5]

Science Advisory Board Staff Office; Notification of Advisory Meeting of the SAB All-Ages Lead Model (AALM) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB All-Ages Lead Model Review Panel (Panel) for the purpose of providing the Agency with advice and recommendations on the recently-developed All-Ages Lead Model.

DATES: The meeting will be held Thursday, October 27, 2005, from 9 a.m. to 5:30 p.m. (eastern time), and Friday, October 28, 2005, from 9 a.m. to 2 p.m. (eastern time).

ADDRESSES: The meeting will take place at SAB Conference Center, 1025 F Street, NW., Suite 3700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public who would like to submit written or brief oral comments (5 minutes or less), or wants further information concerning this meeting, may contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: *SAB and the AALM Review Panel:* The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The Panel will provide advice through the chartered SAB, and will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The SAB Staff Office recently established the SAB AALM Review Panel to provide the EPA Administrator, through the SAB, with advice and recommendations on the Agency's All-Ages Lead Model. The Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The SAB Staff Office has formed this Panel at the request of EPA's Office of Research and Development (ORD), National Center for Environmental Assessment (NCEA), to provide advice and recommendations to the Agency on EPA's recently-developed All-Ages Lead Model (AALM). The AALM is designed to predict lead concentrations in body tissues and organs for a hypothetical individual, based on a simulated lifetime of lead exposure. Statistical methods can be used to extrapolate to a population of similarly-exposed individuals. The precursor to the AALM was the Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children. The IEUBK Model underwent peer review by the SAB in 1991 and was subsequently revised in response to that review, leading to release of Version 0.99d of the IEUBK Model in March 1994. Since then, the IEUBK Model has been widely accepted and used in the risk assessment community as a tool for implementing the site-specific risk assessment process when the issue is childhood lead exposure. Based on further refinement of the IEUBK Model and its expansion for use with additional age groups beyond pediatric populations 6 years old or younger, the AALM has recently been developed to cover older childhood and adult lead exposure. The anticipated outcome will be reduced uncertainty in lead exposure assessments for children and adults.

Any questions concerning either the AALM or the IEUBK Model for Lead in Children should be directed to Dr. Robert Elias, NCEA–RTP, at phone (919) 541–4167; or e-mail *elias.robert@epa.gov*.

Availability of Meeting Materials: NCEA–RTP has posted the "All-Ages Lead Model (AALM) Version 1.05 (External Review Draft)" and related materials (including the Guidance Manual for the AALM Version 1.05) on the NCEA Web site at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=139314*. Furthermore, the SAB Staff Office will post a copy of the final agenda and charge to the Panel for this advisory meeting on the SAB Web site at *http://www.epa.gov/sab* (under "Meeting Agendas") and *http://www.epa.gov/sab/panels/ad_hoc_aalm_rev_panel.htm* in advance of the Panel meeting.

Procedures for Providing Public Comment: The SAB Staff Office accepts written public comments of any length, and will accommodate oral public comments whenever possible. The SAB Staff Office expects that public will not repeat previously-submitted oral or written statements. *Oral Comments:* Requests to provide oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Butterfield no later than October 20, 2005 to reserve time on the October 27, 2005 meeting agenda. Opportunities for oral comments will be limited to five minutes per speaker. *Written Comments:* Written comments should be received in the SAB Staff Office by October 21, 2005 so that the comments may be made available to the members of the members of the SAB AALM Review Panel for their consideration. Comments should be supplied to Mr. Butterfield at the contact information provided above, in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format)). Those providing written comments and who attend the meeting in person are also asked to bring 75 copies of their comments for public distribution.

Meeting: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Butterfield at the phone number or e-mail address noted above no later than October 20, 2005 so that appropriate arrangements can be made.

Dated: October 6, 2005.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. 05–20601 Filed 10–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–OW–FRL–7983–6]

Notice of Data Availability and Request for Data and Information to Develop Ambient Water Quality Criteria for Protection of Human Health for Atrazine and Alachlor

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability; request for scientific data and information.

SUMMARY: Section 304(a) of the Clean Water Act (CWA) requires the U.S. Environmental Protection Agency (EPA) to develop and publish, and from time to time revise, criteria for water accurately reflecting the latest scientific knowledge. Today, EPA is informing the public of data currently available to EPA and requesting data and information to develop Ambient Water Quality Criteria for Protection of Human Health for Atrazine and Alachlor. Lists of references available to the Agency for atrazine and alachlor will be posted on EPA's Office of Science and Technology's Home-page located at *http://www.epa.gov/ost*. In addition to seeking input on the references known to the Agency, EPA is also soliciting any additional pertinent data or information that may be useful in developing these criteria.

DATES: Submit data and information on or before November 14, 2005.

ADDRESSES: Data and information may be submitted electronically, by mail, or through hand deliver/courier. Follow the detailed instructions as provided in Unit B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dr. Amal Mahfouz, U.S. Environmental Protection Agency, Office of Water, Health and Ecological Criteria Division (4304T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566–1114; *Mahfouz.amal@epa.gov* (Data on toxicity of atrazine and alachlor) or Dr. Tala Henry, U.S. Environmental Protection Agency, Office of Water, Health and Ecological Criteria Division (4304T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566–1323; *henry.tala@epa.gov* (Data pertaining to bioaccumulation of atrazine and alachlor).

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this Notice under Docket ID Nos. OW–2005–0008 for Atrazine and OW–2005–0009 for Alachlor. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Although a part of official docket, public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to 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 in Section B.1. Once in the system, select "search," then key in the appropriate docket identification number.

B. How and to Whom Do I Submit Data and Information?

You may submit data electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page. Please ensure that your data are submitted within the specified period.

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit data to EPA electronically is EPA's preferred method for receiving data. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions. Once in the system, select "search," and then key in Docket ID Nos. OW–2005–0008 for Atrazine or OW–2005–0009 for Alachlor. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it along with your data.

ii. *E-mail.* Data may be sent by electronic mail (e-mail) to *ow-docket@epa.gov*, Attention Docket ID Nos. OW–2005–0008 for Atrazine and OW–2005–0009 for Alachlor. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit data on a disk or CD ROM that you mail to the mailing address identified in Unit B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three copies of any data or information to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID Nos. OW–2005–0008 for Atrazine and OW–2005–0009 for Alachlor.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket

Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460, Attention Docket ID Nos. OW–2005–0008 for Atrazine and OW–2005–0009 for Alachlor. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section A.1.

II. Background

A. What Are National Recommended Water Quality Criteria?
B. What Type of Information Does EPA Want from the Public?
C. Where Can I Find More Information on EPA's Revised Process for Developing New or Revised Criteria?

A. What Are National Recommended Water Quality Criteria?

Section 304(a) of the Clean Water Act requires the EPA to develop, publish, and from time to time revise criteria for water that accurately reflect the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgements; economic impacts or the technological feasibility of meeting the criteria in ambient water are not considered. Section 304(a) criteria are guidance to States and Tribes for adopting water quality standards. The criteria also provide a scientific basis for EPA to develop federal regulations under section 303(c).

B. What Type of Information Does EPA Want From the Public?

EPA recently completed a comprehensive review of the available toxicity data for Atrazine and Alachlor. The list of pertinent references identified by the Agency for these two chemicals is available from EPA's electronic public docket under Docket ID Nos. OW–2005–0008 for Atrazine and OW–2005–0009 for Alachlor. EPA is soliciting additional pertinent new toxicity data or information it might use to develop the Ambient Water Quality Criteria for these two chemicals. In particular, EPA is interested in acquiring from the public any new data, not identified by the Agency's literature review, on the toxicity and human exposure to these chemicals from ambient water bodies as well as the bioaccumulation of each of these two chemicals in aquatic organisms to calculate trophic level specific bioaccumulation factors; in addition to seeking input on the references known to the Agency, EPA is also soliciting any additional pertinent data or information that may be useful in developing these criteria, particularly new data on the toxicity of these two chemicals. You should adequately document any data you submit. It should also contain enough supporting information to show that acceptable test procedures were used.

Please refer to the EPA's "Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health—2000" (EPA–822–B–00–004, October 2000 and EPA–822–R–03–030, December 2003); for guidance on data suitability. These documents are available at the EPA website under using the following link, *http://www.epa.gov/waterscience/criteria/humanhealth/method/index.html*. It is also available from EPA's electronic public docket at *http://www.epa.gov/edocket/*.

C. Where Can I Find More Information on EPA's Revised Process for Developing New or Revised Criteria?

The Agency published detailed information about its revised process for developing and revising criteria in the **Federal Register** on December 10, 1998 (63 FR 68354) and in the EPA documents entitled "Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health" (vol 1 on Risk Assessment, EPA–822–B–00–004, October 2000; and vol 2 on Bioaccumulation, EPA–822–R–03–030, December 2003). The revised process provides greater opportunities for public input and makes the criteria development process more efficient. A copy of the technical information that will be used to derive the atrazine and alachlor criteria are available in the EPA's Interim Registration Eligibility Document (IRED) for Atrazine (2003) that is available at *http://www.epa.gov/oppsrrd1/reregistration/atrazine* and the Registration Eligibility Document (RED) for Alachlor (1998) that is available at *http://cfpub.epa.gov/oppref/rereg/status.cfm?show=rereg*.

Dated: October 7, 2005.

Ephraim S. King,

Director, Office of Science and Technology.

[FR Doc. 05–20599 Filed 10–13–05; 8:45 am]

BILLING CODE 6560–50–U

FARM CREDIT ADMINISTRATION

Sunshine Act; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 13, 2005, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 8, 2005 (Open and Closed).

B. Reports

- Potential Impact of Hurricane Katrina and Hurricane Rita on the FCS.

C. New Business—Regulations

- Risk-Based Capital Stress Test—Proposed Rule.

Dated: October 7, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–20721 Filed 10–12–05; 2:27 pm]

BILLING CODE 6705–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2005–N–06]

Proposed Collection; 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) is seeking public comments concerning the information collection known as "Community Support Requirements," which has been assigned control number 3069–0003 by the Office of Management and Budget (OMB). The Finance Board intends to submit the information collection to OMB for review and approval of a 3 year extension of the control number, which is due to expire on February 28, 2006.

DATES: Interested persons may submit comments on or before December 13, 2005.

Comments: Submit comments by any of the following methods:

E-mail: comments@fhfb.gov.

Fax: 202–408–2580.

Mail/Hand Delivery: Federal Housing Finance Board, 1625 Eye Street NW., Washington, DC 20006, ATTENTION: Public Comments.

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to the Finance Board at *comments@fhfb.gov* to ensure timely receipt by the agency.

Include the following information in the subject line of your submission: Federal Housing Finance Board. Proposed Collection; Comment Request: Community Support Requirements. 2005–N–06.

We will post all public comments we receive on this notice without change, including any personal information you provide, such as your name and address, on the Rules, Notices, and Public Comments chart on the Finance Board Web site at *http://www.fhfb.gov/Default.aspx?Page=93&Top=93.*

FOR FURTHER INFORMATION CONTACT: Emma Fitzgerald, Program Analyst, Office of Supervision, by telephone at 202–408–2874, by electronic mail at *fitzgeralde@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1625 Eye Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service that Federal Home Loan Bank (FHLBank) members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). In establishing these community support requirements for FHLBank members, the Finance Board must take into account factors such as the FHLBank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901, *et seq.*, and record of lending to first-time homebuyers. 12 U.S.C. 1430(g)(2). Part 944 of the Finance Board regulations implements section 10(g) of the Bank Act. *See* 12 CFR part 944. The rule provides uniform community support standards all FHLBank members must meet and review criteria Finance Board staff must apply to determine compliance with section 10(g). More specifically, section 944.2 of the rule (12 CFR 944.2) implements the statutory community support requirement and requires each member selected for review to submit a completed Community Support Statement Form to the Finance Board. A copy of the Community Support Statement Form is attached to this Notice. Section 944.3 (12 CFR 944.3) establishes community support standards for the two statutory factors—CRA and first-time homebuyer performance—and provides guidance to a respondent on how it may satisfy the standards. Sections 944.4 and 944.5 (12 CFR 944.4–5) establish the procedures and criteria the Finance Board uses in determining whether FHLBank members satisfy the statutory and regulatory community support requirements.

The information collection contained in the Community Support Statement Form and sections 944.2 through 944.5 of the rule is necessary to enable and is used by the Finance Board to determine whether FHLBank members satisfy the statutory and regulatory community support requirements. Only FHLBank members that meet these requirements may maintain continued access to long-term FHLBank advances. *See* 12 U.S.C. 1430(g).

The OMB number for the information collection is 3069–0003. The OMB clearance for the information collection expires on February 28, 2006. The likely respondents are institutions that are members of an FHLBank.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 5155 FHLBank members, with one response per member. The estimate for the average hours per response is one hour. The estimate for the total annual hour burden is 5155 hours (5155 members x 1 response per member x 1 hour).

C. Comment Request

The Finance Board requests written comments on the following: (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 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 applicants and housing associates, including through the use of automated collection techniques or other forms of information technology.

Dated: October 7, 2005.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD
COMMUNITY SUPPORT STATEMENT

(Instructions on Reverse)

Name of Institution: _____

Address: _____

City: _____ **State:** _____ **Zip Code:** _____

Docket Number: _____

Contact Person: (Mr./Ms.) _____ **Title:** _____

Phone Number: (___) _____ **Fax Number:** (___) _____

I. CRA Factor

Most recent federal CRA Rating: _____ CRA Evaluation Date: _____

II. First-time Homebuyer Factor *(You may complete either Section A or B, or both sections. Members with "Outstanding" federal CRA ratings need not complete this section.)*

A. Complete the following four questions using data for the past year.

1. Number of mortgage loans made to first-time homebuyers _____
2. Dollar amount of loans made to first-time homebuyers $_____
3. Loans made to first-time homebuyers as a percentage of all mortgage loans _____%
4. Dollars loaned to first-time homebuyers as a percentage of all mortgage dollars loaned _____%

B. Check as many boxes as appropriate

1. In-house first-time homebuyer program *(e.g.* marketing plans and outreach programs) _____
2. Other in-house lending products that serve first-time homebuyers or low- and moderate-income homebuyers _____
3. Flexible underwriting standards for first-time homebuyers _____
4. Participate in nationwide first-time homebuyer programs (Fannie Mae, Freddie Mac, etc.) _____
5. Participate in federal government programs that serve first-time homebuyers (FHA, VA, etc.) _____
6. Participate in state or local government programs targeted to first-time homebuyers _____
7. Financial support or technical assistance to community groups or organizations that assist first-time homebuyers _____
8. Participate in loan consortia that make loans to first-time homebuyers _____
9. Participate in or support special counseling or homeownership education targeted to first-time homebuyers _____
10. Hold investments or make loans that support first-time homebuyer programs _____
11. Hold mortgage-backed securities that may include a pool of loans to low- and moderate-income homebuyers _____
12. Participate in service organizations that provide mortgages _____
13. Participate in FHLBank community lending programs _____
14. Other (see instructions for Part II) _____

III. Certify that information in this Community Support Statement and the attachments is correct to the best of your knowledge by filling out the information below.

Signed _____ Title _____

Print Name _____ Date _____

FHFB Form 96-01 OMB Number 3069-0003 Expires 2-28-2006

Community Support Statement Instructions

Purpose: To maintain continued access to long-term advances, section 10(g) of the Federal Home Loan Bank Act [12 U.S.C. §1430(g)] requires the Federal Housing Finance Board (Finance Board) to take into account a Federal Home Loan Bank member's performance under the Community Reinvestment Act of 1977 [12 U.S.C. §2901 et seq.] (CRA) and its record of lending to first-time homebuyers. For purposes of community support review, the term "long-term advances" means advances with a term to maturity greater than one year.

Part I (CRA Factor): Members subject to CRA may complete this section. Indicate your institution's most recent federal CRA evaluation rating and date. [If your institution is not subject to CRA, indicate this in the CRA evaluation field on this form.]

If a member's most recent federal CRA evaluation is rated "Needs to Improve," the Finance Board will place that member on probation until it receives the rating from its next CRA examination. During the probationary period, it will retain access to long-term advances. If the member does not receive an improved CRA rating at its next CRA evaluation, its access to long-term advances will be restricted.

If a member's most recent federal CRA rating is "Substantial Non-compliance," the Finance Board immediately will take action to restrict that member's access to long term advances. The restriction will remain in effect until the member's rating improves.

Part II (First-time Homebuyer Factor): All members, except those with "Outstanding" federal CRA ratings must complete this section. An institution may demonstrate assistance to first-time homebuyers in many ways, but the Finance Board is particularly interested in actual loans, products, and services to first-time homebuyers. Although completion of both Section A and Section B is requested, you may satisfy the first-time homebuyer factor by demonstrating adequate lending performance (Section A), by demonstrating participation in programs that assist first-time homebuyers (Section B), or by a combination of both factors. If the information requested in Part II is inadequate to reflect your institution's compliance with the first-time homebuyer factor, you may attach a one-page description of your efforts to assist first-time homebuyers and/or an explanation of factors affecting your institution's ability to assist first-time homebuyers. No other information beyond this one-page description will be considered.

If a member does not submit evidence of assistance to first-time homebuyers, the Finance Board immediately will take action to restrict that member's access to long term advances. The restriction will remain in effect until the member submits information satisfactory to the Finance Board.

Part III (Certification): All members must complete this section. An appropriate senior official must certify that the information in this Community Support Statement and the attachments is correct to the best of his/her knowledge.

Assistance: Your Federal Home Loan Bank has a Community Support Program that can assist you in preparing your Community Support Statement.

Once you have completed this form, please submit it, along with any attachments, to the Federal Housing Finance Board, Office of Supervision, Community Investment and Affordable Housing, 1625 Eye Street NW, Washington, DC 20006, or by electronic mail to fitzgeralde@fhfb.gov.

[FR Doc. 05–20575 Filed 10–13–05; 8:45 am]
BILLING CODE 6725–01–C

FEDERAL HOUSING FINANCE BOARD

[No. 2005–N–05]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2004–05 seventh quarter review cycle under the Finance Board's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board on or before November 28, 2005.

ADDRESSES: Bank members selected for the 2004–05 seventh quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Federal Housing Finance Board, Office of Supervision, Community Investment and Affordable Housing, 1625 Eye Street NW., Washington, DC 20006, or by electronic mail at *FITZGERALDE@FHFB.GOV*.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Supervision, Community Investment and Affordable Housing, by telephone at 202–408–2874, by electronic mail at *FITZGERALDE@FHFB.GOV*, or by regular mail at the Federal Housing Finance Board, 1625 Eye Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the November 28, 2005 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before October 31, 2005, each Bank will notify the members in its district that have been selected for the 2004–05 seventh quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's Web site: *WWW.FHFB.GOV*. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2004–05 seventh quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

Balboa Reinsurance Company	Calabasas	California
First New England Federal Credit Union	East Hartford	Connecticut
Ledge Light Federal Credit Union	Groton	Connecticut
Eastern Federal Bank	Norwich	Connecticut
Putnam Savings Bank	Putnam	Connecticut
Connecticut Community Bank, N.A.	Westport	Connecticut
Merrill Merchants Bank	Bangor	Maine
St. Joseph's Credit Union	Biddeford	Maine
Seaboard Federal Credit Union	Bucksport	Maine
The First, National Association	Damariscotta	Maine
Union Trust Company	Ellsworth	Maine
NorState Federal Credit Union	Madawaska	Maine
Norway Savings Bank	Norway	Maine
University Credit Union	Orono	Maine
Infinity Federal Credit Union	Portland	Maine
Belmont Savings Bank	Belmont	Massachusetts
University Credit Union	Boston	Massachusetts
Greenfield Savings Bank	Greenfield	Massachusetts
The Lenox National Bank	Lenox	Massachusetts
Enterprise Bank and Trust Company	Lowell	Massachusetts
Butler Bank	Lowell	Massachusetts
Northmark Bank	North Andover	Massachusetts
RTN Federal Credit Union	Waltham	Massachusetts

Westborough Bank	Westborough	Massachusetts
Commerce Bank & Trust Company	Worcester	Massachusetts
ChittendenTrust Company	Burlington	Vermont
New England Federal Credit Union	Williston	Vermont

Federal Home Loan Bank of New York—District 2

Affinity Federal Credit Union	Basking Ridge	New Jersey
Boardwalk Bank	Linwood	New Jersey
Millville Savings and Loan Association	Millville	New Jersey
Hudson City Savings Bank	Paramus	New Jersey
Cenlar FSB	Trenton	New Jersey
Llewellyn-Edison Savings Bank, FSB	West Orange	New Jersey
Bank of Akron	Akron	New York
SEFCU	Albany	New York
Putnam County Savings Bank	Brewster	New York
Ponce De Leon Federal Bank	Bronx	New York
First American International Bank	Brooklyn	New York
First State Bank	Canisteo	New York
Flushing Savings Bank	Flushing	New York
American Community Bank	Glen Cove	New York
Gouverneur Savings & Loan Association	Gouverneur	New York
Bank Leumi USA	New York	New York
Great Eastern Bank	New York	New York
HSBC Bank, USA	Rochester	New York
WCTA Federal Credit Union	Sodus	New York
Power Federal Credit Union	Syracuse	New York
Wyoming County Bank	Warsaw	New York
Community Mutual Savings Bank	White Plains	New York
Kraft Foods Federal Credit Union	White Plains	New York
Hudson Valley Bank	Yonkers	New York
Firstbank Puerto Rico	Santurce	Puerto Rico
Bank of St. Croix	Christiansted	Virgin Islands

Federal Home Loan Bank of Pittsburgh—District 3

Wilmington Trust Company	Wilmington	Delaware
Lehman Brothers Bank, FSB	Wilmington	Delaware
AIG Federal Savings Bank	Wilmington	Delaware
Nazareth National Bank	Bethlehem	Pennsylvania
First Columbia Bank & Trust Company	Bloomsburg	Pennsylvania
Fidelity Savings and Loan Association of Bucks County	Bristol	Pennsylvania
Citizens Savings Association	Clarks Summit	Pennsylvania
CSB Bank	Curwensville	Pennsylvania
The Fidelity Deposit & Discount Bank	Dunmore	Pennsylvania
The First National Bank in Fleetwood	Fleetwood	Pennsylvania
Swineford National Bank	Hummels Wharf	Pennsylvania
S & T Bank	Indiana	Pennsylvania
Jonestown Bank and Trust Company	Jonestown	Pennsylvania
Commercial Bank of Pennsylvania	Latrobe	Pennsylvania
Lafayette Ambassador Bank	LeHigh Valley	Pennsylvania
Susquehanna Bank	Lititz	Pennsylvania
Members 1st Federal Credit Union	Mechanicsburg	Pennsylvania
The First National Bank of Mercersburg	Mercersburg	Pennsylvania
The Juniata Valley Bank	Mifflintown	Pennsylvania
Mid Penn Bank	Millersburg	Pennsylvania
Royal Bank of Pennsylvania	Narberth	Pennsylvania
Atlantic Credit Union	Newtown Square	Pennsylvania
Merck, Sharp & Dohme Federal Credit Union	North Wales	Pennsylvania
St. Edmond's Federal Savings Bank	Philadelphia	Pennsylvania
Port Richmond Savings	Philadelphia	Pennsylvania
Dwelling House Savings and Loan Association	Pittsburgh	Pennsylvania
Citadel Federal Credit Union	Thorndale	Pennsylvania
The Turbotville National Bank	Turbotville	Pennsylvania
Woodlands Bank	Williamsport	Pennsylvania
Summit Community Bank	Charleston	West Virginia
The United Federal Credit Union	Morgantown	West Virginia
First National Bank of Romney	Romney	West Virginia
Jefferson Security Bank	Shepherdstown	West Virginia
Steel Works Community Federal Credit Union	Weirton	West Virginia
Ameribank	Welch	West Virginia

Federal Home Loan Bank of Atlanta—District 4

Compass Bank	Birmingham	Alabama
First National Bank of Shelby County	Columbiana	Alabama
Peoples Bank of North Alabama	Cullman	Alabama

Bank of Dadeville	Dadeville	Alabama
The Peoples Bank of Coffee County	Elba	Alabama
First Southern Bank	Florence	Alabama
Citizens Bank & Savings Company	Russellville	Alabama
Troy Bank & Trust Company	Troy	Alabama
Security Bank	Tuscaloosa	Alabama
State Bank and Trust	Winfield	Alabama
IDB—IIC Federal Credit Union	Washington	D.C.
United States Senate Federal Credit Union	Washington	D.C.
Gibraltar Bank, FSB	Coral Gables	Florida
Merchants and Southern Bank	Gainesville	Florida
Ocala National Bank	Ocala	Florida
Bankers Insurance Company	St. Petersburg	Florida
Suncoast Schools Federal Credit Union	Tampa	Florida
Citrus Bank, N.A.	Vero Beach	Florida
First Choice Credit Union	West Palm Beach	Florida
Flag Bank	Atlanta	Georgia
CDC Federal Credit Union	Atlanta	Georgia
Bank of Camilla	Camilla	Georgia
PlantersFirst	Cordele	Georgia
Southeastern Bank	Darien	Georgia
Colony Bank of Dodge County	Eastman	Georgia
United Bank and Trust Company	Gainesville	Georgia
The Gordon Bank	Gordon	Georgia
Citizens Community Bank	Hahira	Georgia
Georgia State Bank	Mableton	Georgia
Pelham Banking Company	Pelham	Georgia
The Bank of Perry	Perry	Georgia
The Savannah Bank, N.A.	Savannah	Georgia
Bank of Thomas County	Thomasville	Georgia
The Park Avenue Bank	Valdosta	Georgia
Oconee State Bank	Watkinsville	Georgia
The Patterson Bank	Waycross	Georgia
The First National Bank of Waynesboro	Waynesboro	Georgia
Fullerton Federal Savings Association	Baltimore	Maryland
Kosciuszko Federal Savings Bank	Baltimore	Maryland
Bradford Bank	Baltimore	Maryland
Johns Hopkins Federal	Baltimore	Maryland
First Mariner Bank	Baltimore	Maryland
Midstate Federal Savings & Loan Association	Baltimore	Maryland
The Washington Savings Bank, F.S.B.	Bowie	Maryland
The Centreville National Bank of Maryland	Centreville	Maryland
The Columbia Bank	Columbia	Maryland
County Banking and Trust Company	Elkton	Maryland
The Bank of Glen Burnie	Glen Burnie	Maryland
Cedar Point Federal Credit Union	Lexington Park	Maryland
Sandy Spring Bank	Olney	Maryland
BUCS Federal Bank	Owings Mills	Maryland
Prince George's Federal Savings Bank	Upper Marlboro	Maryland
Belmont Federal Savings and Loan Association	Belmont	North Carolina
Black Mountain Savings Bank, S.S.B.	Black Mountain	North Carolina
Coastal Federal Credit Union	Raleigh	North Carolina
Security Savings Bank, SSB	Southport	North Carolina
Bank of North Carolina	Thomasville	North Carolina
Clover Community Bank	Clover	South Carolina
The Peoples National Bank	Easley	South Carolina
Carolina First Bank	Greenville	South Carolina
Williamsburg First National Bank	Kingstree	South Carolina
Provident Community Bank	Union	South Carolina
Arthur State Bank	Union	South Carolina
Union Bank & Trust Company	Bowling Green	Virginia
The First National Bank of Christiansburg	Christiansburg	Virginia
The National Bank of Fredericksburg	Fredericksburg	Virginia
Bank of McKenney	McKenney	Virginia
Greater Atlantic Bank	Reston	Virginia
Farmers and Merchants Bank	Timberville	Virginia

Federal Home Loan Bank of Cincinnati—District 5

Union National Bank & Trust Company	Barbourville	Kentucky
Bank of Benton	Benton	Kentucky
Taylor County Bank	Campbellsville	Kentucky
First Federal Savings Bank	Cynthiana	Kentucky
First Federal Savings Bank of Elizabethtown	Elizabethtown	Kentucky
Commonwealth Community Bank	Hartford	Kentucky
The Citizens Bank	Hickman	Kentucky

The First State Bank	Irvington	Kentucky
Whitaker Bank, NA	Lexington	Kentucky
Cumberland Valley National Bank and Trust Company	London	Kentucky
Inez Deposit Bank, FSB	Louisa	Kentucky
River City Bank	Louisville	Kentucky
Fifth Third Bank Kentucky, Inc	Louisville	Kentucky
Green River Bank	Morgantown	Kentucky
Citizens Bank of New Liberty	New Liberty	Kentucky
Citizens National Bank of Paintsville	Paintsville	Kentucky
West Point Bank	Radcliff	Kentucky
Sebree Deposit Bank	Sebree	Kentucky
The Peoples Bank	Taylorsville	Kentucky
United Bank & Trust Company	Versailles	Kentucky
The Farmers & Merchants State Bank	Archbold	Ohio
The Citizens Bank of Ashville	Ashville	Ohio
The Caldwell Savings and Loan Company	Caldwell	Ohio
CINCO Federal Credit Union, Inc	Cincinnati	Ohio
The Pioneer Savings Bank	Cleveland	Ohio
Century Federal Credit Union	Cleveland	Ohio
Clyde-Findlay Area Credit Union	Clyde	Ohio
First Federal Savings and Loan Association of	Delta	Ohio
Ohio Central Savings	Dublin	Ohio
The Croghan Colonial Bank	Fremont	Ohio
First Service Federal Credit Union	Groveport	Ohio
The Killbuck Savings Bank Company	Killbuck	Ohio
First National Bank of New Holland	New Holland	Ohio
The Old Fort Banking Company	Old Fort	Ohio
Cornerstone Bank	Springfield	Ohio
The Security National Bank and Trust Company	Springfield	Ohio
Peoples Savings Bank of Troy	Troy	Ohio
The First National Bank of Wellston	Wellston	Ohio
The Wayne Savings Community Bank	Wooster	Ohio
First Federal Savings Bank	Clarksville	Tennessee
The Bank/First Citizens Bank	Cleveland	Tennessee
Peoples Bank	Clifton	Tennessee
Bank of Dickson	Dickson	Tennessee
The Home Bank	Ducktown	Tennessee
Security Bank	Dyersburg	Tennessee
Greeneville Federal Bank, fsb	Greeneville	Tennessee
Citizens Bank	Hartsville	Tennessee
Citizens Bank of Blount County	Maryville	Tennessee
National Bank of Commerce	Memphis	Tennessee
The Bank of Moscow	Moscow	Tennessee
ORNL Federal Credit Union	Oak Ridge	Tennessee
Merchants & Planters Bank	Toone	Tennessee
AEDC Federal Credit Union	Tullahoma	Tennessee

Federal Home Loan Bank of Indianapolis—District 6

Hendricks County Bank and Trust Company	Brownsburg	Indiana
First Farmers Bank & Trust Company	Converse	Indiana
First National Bank of Dana	Dana	Indiana
Star Financial Bank	Fort Wayne	Indiana
Professional Federal Credit Union	Fort Wayne	Indiana
Springs Valley Bank & Trust Company	French Lick	Indiana
Garrett State Bank	Garrett	Indiana
Griffith Savings Bank	Griffith	Indiana
Indiana Members Credit Union	Indianapolis	Indiana
Eli Lilly Federal Credit Union	Indianapolis	Indiana
First National Bank & Trust	Kokomo	Indiana
Dearborn SA, FA	Lawrenceburg	Indiana
Farmers State Bank	Mentone	Indiana
The North Salem State Bank	North Salem	Indiana
Tri-County Bank & Trust Company	Roachdale	Indiana
Central Bank	Russiaville	Indiana
Teachers Credit Union	South Bend	Indiana
Bank of Lenawee	Adrian	Michigan
University Bank	Ann Arbor	Michigan
The Blissfield State Bank	Blissfield	Michigan
Byron Center State Bank	Byron Center	Michigan
CSB Bank	Capac	Michigan
Exchange State Bank	Carsonville	Michigan
First National Bank	Crystal Falls	Michigan
The State Savings Bank	Frankfort	Michigan
First National Bank of Gaylord	Gaylord	Michigan
LSI Credit Union	Grand Rapids	Michigan

First Community Bank	Harbor Springs	Michigan
Republic Bank	Lansing	Michigan
G.W. Jones Exchange Bank	Marcellus	Michigan
Shelby State Bank	Shelby	Michigan
ChoiceOne Bank	Sparta	Michigan
Independent Bank East Michigan	Troy	Michigan

Federal Home Loan Bank of Chicago—District 7

GreatBank	Algonquin	Illinois
State Bank of the Lakes	Antioch	Illinois
First National Bank	Ava	Illinois
Town & Country Bank	Buffalo	Illinois
Farmers State Bank of Hoffman	Centralia	Illinois
International Bank of Chicago	Chicago	Illinois
First East Side Savings Bank	Chicago	Illinois
Illinois Service FS&LA	Chicago	Illinois
Park Federal Savings Bank	Chicago	Illinois
First Bank of the Americas	Chicago	Illinois
American Union Savings and Loan Association	Chicago	Illinois
Builders Bank	Chicago	Illinois
LaSalle Bank N.A.	Chicago	Illinois
The PrivateBank and Trust Company	Chicago	Illinois
Selfreliance Ukranian American Federal Credit	Chicago	Illinois
First National Bank	Chicago Heights	Illinois
Cissna Park State Bank	Cissna Park	Illinois
GreatBank, N.A.	Evanston	Illinois
The Peoples National Bank of McLeansboro	Fairfield	Illinois
National Bank	Hillsboro	Illinois
Community Trust Bank	Irvington	Illinois
First Midwest Bank	Itasca	Illinois
Midwest Bank of Western Illinois	Monmouth	Illinois
The Bank of Illinois in Normal	Normal	Illinois
Hemlock Federal Bank for Savings	Oak Forest	Illinois
Palos Bank and Trust Company	Palos Heights	Illinois
Citizens Equity First Credit Union	Peoria	Illinois
First National Bank in Pinckneyville	Pinckneyville	Illinois
Pontiac National Bank-Peoples Bank	Pontiac	Illinois
First Bankers Trust Company, N.A.	Quincy	Illinois
First National Bank of Raymond	Raymond	Illinois
AMCORE Bank N.A.	Rockford	Illinois
Cole Taylor Bank	Skokie	Illinois
The First National Bank in Toledo	Toledo	Illinois
Busey Bank	Urbana	Illinois
Fox Communities Credit Union	Appleton	Wisconsin
Peoples State Bank	Augusta	Wisconsin
First National Bank & Trust Company	Beloit	Wisconsin
Citizens State Bank	Cadott	Wisconsin
Denmark State Bank	Denmark	Wisconsin
Security National Bank	Durand	Wisconsin
Union Bank and Trust Company	Evansville	Wisconsin
State Bank of La Crosse	La Crosse	Wisconsin
Trane Federal Credit Union	La Crosse	Wisconsin
Park Bank	Madison	Wisconsin
Capitol Bank	Madison	Wisconsin
Premier Community Bank	Marion	Wisconsin
Bay View Federal Savings and Loan Association	Milwaukee	Wisconsin
Farmers Savings Bank	Mineral Point	Wisconsin
Alliance Bank	Mondovi	Wisconsin
The Necedah Bank	Necedah	Wisconsin
Farmers Exchange Bank	Neshkoro	Wisconsin
Hometown Bank	St. Cloud	Wisconsin
Community State Bank	Union Grove	Wisconsin

Federal Home Loan Bank of Des Moines—District 8

Quad City Bank and Trust Company	Bettendorf	Iowa
Exchange State Bank	Collins	Iowa
NCMIC Insurance Company	Des Moines	Iowa
Security Savings Bank	Eagle Grove	Iowa
Iowa State Bank and Trust Company	Fairfield	Iowa
First Bank and Trust Company	Glidden	Iowa
American National Bank	Holstein	Iowa
Home State Bank	Jefferson	Iowa
Security Savings Bank	Larchwood	Iowa
Farmers & Merchants Savings Bank	Manchester	Iowa

Pinnacle Bank	Marshalltown	Iowa
Northwoods State Bank	Mason City	Iowa
First Citizens National Bank	Mason City	Iowa
Pilot Grove Savings Bank	Pilot Grove	Iowa
Frontier Bank	Rock Rapids	Iowa
Citizens State Bank	Sheldon	Iowa
First National Bank	Shenandoah	Iowa
Morningside Bank & Trust	Sioux City	Iowa
First Bank	West Des Moines	Iowa
GuideOne Specialty Mutual Insurance Company	West Des Moines	Iowa
Security Bank Minnesota	Albert Lea	Minnesota
First Security Bank	Byron	Minnesota
Miners National Bank	Eveleth	Minnesota
Premier Bank	Maplewood	Minnesota
Peoples State Bank of Plainview	Plainview	Minnesota
United Prairie Bank-Slayton	Slayton	Minnesota
First Security Bank—Sleepy Eye	Sleepy Eye	Minnesota
BankCherokee	St. Paul	Minnesota
First National Bank in Wadena	Wadena	Minnesota
Wadena State Bank	Wadena	Minnesota
Mississippi County Savings & Loan Association	Charleston	Missouri
First Security State Bank	Charleston	Missouri
Peoples Bank	Cuba	Missouri
The Citizens Bank of Edina	Edina	Missouri
Century Bank of the Ozarks	Gainesville	Missouri
The Hamilton Bank	Hamilton	Missouri
Farmers & Merchants Bank & Trust Company	Hannibal	Missouri
Premier Bank	Jefferson City	Missouri
B & L Bank	Lexington	Missouri
Bank of Minden	Mindenmines	Missouri
Bank of Cairo and Moberly	Moberly	Missouri
St. Clair County State Bank	Osceola	Missouri
Platte Valley Bank of Missouri	Platte City	Missouri
Farmers State Bank of Northern Missouri	Savannah	Missouri
Central Bank of Missouri	Sedalia	Missouri
Citizens National Bank of Springfield	Springfield	Missouri
Mid-Missouri Bank	Springfield	Missouri
Great Southern Bank	Springfield	Missouri
Gate City Bank	Fargo	North Dakota
State Bank of Alcester	Alcester	South Dakota
First American Bank & Trust, National Association	Sioux Falls	South Dakota

Federal Home Loan Bank of Dallas—District 9

First Federal Bank of AR, FA	Harrison	Arkansas
Simmons First Bank of Jonesboro	Jonesboro	Arkansas
Simmons First Bank of Russellville	Russellville	Arkansas
Chambers Bank of North Arkansas	Springdale	Arkansas
Warren Bank & Trust Company	Warren	Arkansas
Mississippi River Bank	Belle Chasse	Louisiana
Citizens Savings Bank	Bogalusa	Louisiana
Homeland Federal Savings Bank	Columbia	Louisiana
Peoples State Bank	Many	Louisiana
City Bank & Trust Company	Natchitoches	Louisiana
First Bank and Trust	New Orleans	Louisiana
ANECA Federal Credit Union	Shreveport	Louisiana
Bank of Anguilla	Anguilla	Mississippi
Guaranty Bank and Trust Company	Belzoni	Mississippi
Heritage Banking Group	Carthage	Mississippi
First National Bank of Clarksdale	Clarksdale	Mississippi
Cleveland Community Bank SSB	Cleveland	Mississippi
Bank of Forest	Forest	Mississippi
Hancock Bank	Gulfport	Mississippi
Merchants and Farmers Bank	Kosciusko	Mississippi
PriorityOne Bank	Magee	Mississippi
First National Bank of Picayune	Picayune	Mississippi
The Peoples Bank	Ripley	Mississippi
First National Bank in Alamogordo	Alamogordo	New Mexico
New Mexico Educators Federal Credit Union	Albuquerque	New Mexico
First State Bank, NM	Albuquerque	New Mexico
Ranchers Banks	Belen	New Mexico
University Federal Credit Union	Austin	Texas
Citizens National Bank at Brownwood	Brownwood	Texas
Columbus State Bank	Columbus	Texas
Texas Community Bank & Trust	Dallas	Texas
Graham Savings & Loan, FA	Graham	Texas

MemberSource Credit Union	Houston	Texas
American State Bank	Lubbock	Texas
American Bank of Texas, N.A.	Marble Falls	Texas
First Bank & Trust of Memphis	Memphis	Texas
Liberty National Bank in Paris	Paris	Texas
Security State Bank	Pearsall	Texas
HCSB, a state banking association	Plainview	Texas
Share Plus Federal Bank	Plano	Texas
1st International Bank	Plano	Texas
Legacy Bank of Texas	Plano	Texas
First Community Bank, N.A.	San Benito	Texas
Peoples State Bank	Sheperd	Texas
Texas Savings Bank, s.s.b.	Snyder	Texas
Mainland Bank	Texas City	Texas
Texas Star Bank	Van Alstyne	Texas
Herring Bank	Vernon	Texas

Federal Home Loan Bank of Topeka—District 10

Bank of Colorado	Fort Collins	Colorado
Alpine Bank	Glenwood Springs	Colorado
First National Bank of Las Animas	Las Animas	Colorado
FirstBank of Arapahoe County	Littleton	Colorado
Mancos Valley Bank	Mancos	Colorado
The Pueblo Bank and Trust Company	Pueblo	Colorado
High Country Bank	Salida	Colorado
Community National Bank	Chanute	Kansas
Fidelity State Bank and Trust Company	Dodge City	Kansas
Armed Forces Bank	Fort Leavenworth	Kansas
First National Bank and Trust Company	Junction City	Kansas
First State Bank of Kansas City, Kansas	Kansas City	Kansas
Heartland Bank	Leawood	Kansas
Premier Bank	Lenexa	Kansas
Metcalf Bank	Overland Park	Kansas
TeamBank, N.A.	Paola	Kansas
Community National Bank	Seneca	Kansas
Mid American Credit Union	Wichita	Kansas
Five Points Bank	Grand Island	Nebraska
First State Bank	Lincoln	Nebraska
First National Bank & Trust Company of Minden	Minden	Nebraska
FCE Credit Union	Omaha	Nebraska
Plattsmouth State Bank	Plattsmouth	Nebraska
The Jones National Bank & Trust Company	Seward	Nebraska
First National Bank of Wahoo	Wahoo	Nebraska
Vision Bank	Ada	Oklahoma
Community National Bank	Alva	Oklahoma
Alva State Bank & Trust Company	Alva	Oklahoma
American National Bank	Ardmore	Oklahoma
Oklahoma Employees Credit Union	Bethany	Oklahoma
First Bank Centre	Broken Arrow	Oklahoma
Bank of Commerce	Catoosa	Oklahoma
Farmers and Merchants Bank	Crescent	Oklahoma
The Eastman National Bank of Newkirk	Newkirk	Oklahoma
The FNB&TC of Okmulgee	Okmulgee	Oklahoma
First State Bank	Picher	Oklahoma
F & M Bank, NA	Piedmont	Oklahoma
McClain Bank, NA	Purcell	Oklahoma
Tinker Federal Credit Union	Tinker AFB	Oklahoma
SpiritBank	Tulsa	Oklahoma
Oklahoma Central Credit Union	Tulsa	Oklahoma
Welch State Bank	Welch	Oklahoma

Federal Home Loan Bank of San Francisco—District 11

Mesa Bank	Mesa	Arizona
Camelback Community Bank	Phoenix	Arizona
Desert Schools Federal Credit Union	Phoenix	Arizona
Southern Arizona Community Bank	Tucson	Arizona
Bank of Tucson	Tucson	Arizona
Cathay Bank	Los Angeles	California
CBC Federal Credit Union	Oxnard	California
Stanford Federal Credit Union	Palo Alto	California
Gateway Bank, AFSB	San Leandro	California
Chinatrust Bank (U.S.A.)	Torrance	California
Visalia Community Bank	Visalia	California
Bank of Walnut Creek	Walnut Creek	California

Community Bank of Nevada	Las Vegas	Nevada
Ensign Federal Credit Union	Las Vegas	Nevada
Northern Nevada Bank	Reno	Nevada

Federal Home Loan Bank of Seattle—District 12

Hawaii USA Federal Credit Union	Honolulu	Hawaii
Idaho Banking Company	Boise	Idaho
Farmers National Bank	Buhl	Idaho
Citizens State Bank	Hamilton	Montana
Valley Bank of Kalispell	Kalispell	Montana
Mountain West Bank of Kalispell, N.A.	Kalispell	Montana
First National Bank of Montana, Inc.	Libby	Montana
First Technology Credit Union	Beaverton	Oregon
Bank of the Cascades	Bend	Oregon
Siuslaw Bank	Eugene	Oregon
Portland Area Community Employees CU	Portland	Oregon
Umpqua Bank	Roseburg	Oregon
Clackamas County Bank	Sandy	Oregon
Lewiston State Bank	Lewiston	Utah
First National Bank of Morgan	Morgan	Utah
Goldenwest Credit Union	Ogden	Utah
Bank of Utah	Ogden	Utah
Western Community Bank	Orem	Utah
American Bank of Commerce	Provo	Utah
Escrow Bank USA	Salt Lake City	Utah
First Utah Bank	Salt Lake City	Utah
Heritage Bank	St. George	Utah
North County Bank	Arlington	Washington
Industrial Credit of Whatcom County	Bellingham	Washington
Cashmere Valley Bank	Cashmere	Washington
Mt. Rainier National Bank	Enumclaw	Washington
EverTrust Bank	Everett	Washington
Northwest Plus Credit Union	Everett	Washington
Rainier Pacific Bank	Fife	Washington
First Savings Bank of Renton	Renton	Washington
Watermark Credit Union	Seattle	Washington
Verity Credit Union	Seattle	Washington
First Heritage Bank	Snohomish	Washington
Horizon Credit Union	Spokane	Washington
American National Bank	Cheyenne	Wyoming
Warren Federal Credit Union	Cheyenne	Wyoming
State Bank of Green River	Green River	Wyoming
Bank of Jackson Hole	Jackson	Wyoming
Central Bank & Trust	Lander	Wyoming
North Side State Bank	Rock Springs	Wyoming
Sheridan State Bank	Sheridan	Wyoming
First Federal Savings Bank	Sheridan	Wyoming

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before October 31, 2005, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2004–05 seventh quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2004–05 seventh quarter review cycle must be delivered to the Finance Board on or before the November 28, 2005 deadline for submission of Community Support Statements.

Dated: October 5, 2005.

John P. Kennedy,

General Counsel.

[FR Doc. 05–20351 Filed 10–13–05; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 31, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. James Jay Johnson, Sutherland, Iowa; to acquire voting shares of R & J Financial Corporation, Elma, Iowa, and thereby indirectly acquire voting shares

of Peoples Savings Bank, Charles City, Iowa.

Board of Governors of the Federal Reserve System, October 11, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5650 Filed 10–13–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site 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 November 10, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Collegiate Peaks Bancorp, Inc., Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Collegiate Peaks Bank, Buena Vista, Colorado.

2. First Financial Bancshares, Inc., Lawrence, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Lawrence Bank, Lawrence, Kansas.

Board of Governors of the Federal Reserve System, October 11, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5649 Filed 10–13–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act, (5 U.S.C. Appendix 2), notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold its ninth meeting. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, November 1, 2005, from 8:30 a.m. to 5 p.m. and on Wednesday, November 2, 2005, from 8:30 a.m. until 4:30 p.m..

ADDRESSES: The Radisson Hotel Old Town Alexandria, 901 North Fairfax Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Bernard Schwetz, D.V.M., Ph.D., Director, Office for Human Research Protections (OHRP), or Catherine Slatinshek, Executive Director, Secretary's Advisory Committee on Human Research Protections; Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; (240) 453–6900; fax: (240) 453–6909; e-mail address: *sachrp@osophs.dhhs.gov*.

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

On November 1, 2005, SACHRP will receive and discuss preliminary reports from its two subcommittees: the Subpart A Subcommittee which is developing recommendations regarding the application of subpart A of 45 CFR part 46 in the current research environment, and the Subcommittee on Research Involving Children which is developing recommendations regarding the Department of Health and Human Services (HHS) regulations and policies for research involving children. The subcommittees were established by SACHRP at its October 4–5, 2004, meeting and at its inaugural meeting on July 22, 2003, respectively. In addition, the Committee will receive a report on progress to date from the Federal Adverse Event Task Force.

On November 2, 2005, the Committee will receive presentations on several topics including an update from the Institute of Medicine concerning work on a report on research involving prisoners; an update on the joint reviews of research involving children that have been conducted by the Food and Drug Administration (FDA) and OHRP under the provisions of FDA regulations at 21 CFR 50.54 and HHS regulations at 45 CFR 46.407; and a series of presentations from ex-officio members to identify future priorities for consideration by the Committee.

Public attendance at the meeting is limited to space available. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact persons. Members of the public will have the opportunity to provide comments on both days of the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed materials distributed to SACHRP members for this scheduled meeting should submit materials to the Executive Director, SACHRP, prior to the close of business Wednesday, October 26, 2005. Information about SACHRP and the draft meeting agenda will be posted on the SACHRP Web site at: *http://ohrp.osophs.dhhs.gov/sachrp/sachrp.htm*.

Dated: October 7, 2005.

Bernard A. Schwetz,

Director, Office for Human Research Protections, Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 05–20589 Filed 10–13–05; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–193, CMS–10079, CMS–2567, CMS–10149, CMS–10165]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Important Message from Medicare Title XVII Section 1866(a)(1)(M), 42 CFR Sections 466.78, 489,20, and 489.27; *Form Number:* CMS–R–193 (OMB#: 0938–0692); *Use:* Hospitals participating in the Medicare program are required to distribute the "Important Message From Medicare" to all Medicare beneficiaries (including those enrolled in a Medicare managed care health plan). Hospitals must distribute this notice at or about the same time of a Medicare beneficiary's admission or during the course of his or her hospital stay. Receiving this information will provide all Medicare beneficiaries with some ability to participate and/or initiate discussions concerning actions that may affect their Medicare coverage, payment, and appeal rights in response to a hospital's or Medicare managed care plan's notification that their care will no longer continue; *Frequency:* Recordkeeping and Reporting—Other: Distribution; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions, Federal, State, Local or Tribal Government; *Number of Respondents:* 6,051; *Total Annual Responses:* 12,500,000; Total Annual Hours: 208,333.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital Wage Index—Occupational Mix Survey and Supporting Regulations in 42 CFR 412.230, 412.304, and 413.65; *Form Number:* CMS–10079 (OMB#: 0938–0907); *Use:* Section 304 of the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Benefits Improvement and Protection Act of 2000 requires CMS to collect wage data on hospital employees by occupational category, at least once every 3 years in order to construct an occupational mix adjustment to the wage index. CMS first collected occupational mix survey data in 2003 for the FY 2005 wage index. In response to industry comments suggesting ways to improve the occupational mix survey, CMS has revised the survey for the next data collection period, 2006, to be used in calculating the FY 2008 wage index. The purpose of the occupational mix adjustment is to control for the effect of hospitals' employment choices on the wage index. For example, hospitals may choose to employ different combinations of registered nurses, licensed practical nurses, nursing aides, and medical assistants for the purpose of providing nursing care to their patients. The varying labor costs associated with these choices reflect hospital management decisions rather than geographic differences in the costs of labor. Each of the approximately 3,800 acute care hospital inpatient prospective payment system (IPPS) providers participating in the Medicare program will be required to complete the 2006 Medicare Wage Index Occupational Mix Survey. The initial survey will be forwarded via e-mail to all of CMS's fiscal intermediaries; *Frequency:* Reporting—Other, Triennially; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 3,800; *Total Annual Responses:* 3,800; Total Annual Hours: 608,000.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Statement of Deficiencies and Plan of Correction contained under 42 CFR 488.18, 488.26, and 488.28; *Form Number:* CMS–2567 (OMB#: 0938–0391); *Use:* Section 1864(a) of the Social Security Act requires that the Secretary use State survey agencies to conduct surveys. The surveys are used to determine if health care facilities meet Medicare, Medicaid, and Clinical Laboratory Improvement Amendments (CLIA) participation requirements. The Statement of Deficiencies and Plan of Correction form, is used to record each deficiency discovered during an inspection. Providers, suppliers and CLIA laboratories also utilize this form to outline a corrective action plan for each deficiency. The States and CMS regional offices use this form to document and certify compliance, and to disclose information to the public; *Frequency:* Recordkeeping, Third party disclosure and Reporting—Annually and Biennially; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal, State, Local or Tribal Government; *Number of Respondents:* 60,000; *Total Annual Responses:* 60,000; Total Annual Hours: 120,000.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Health Insurance Reform: Security Standards Final Rule; *Form Number:* CMS–10149 (OMB#: 0938–0949); *Use:* The Department of Health and Human Services (HHS) Medicare Program, other Federal agencies operating health plans or providing health care, State Medicaid agencies, private health plans, health care providers, and health care clearinghouses must assure their customers (for example, patients, insured individuals, providers, and health plans) that the integrity, confidentiality, and availability of the protected electronic health information they collect, maintain, use, or transmit is protected. The confidentiality of health information is threatened not only by the risk of improper access to stored information, but also by the risk of interception during electronic transmission of the information. The use of the security standards will improve the Medicare and Medicaid programs, other Federal health programs, and private health programs; in addition, it will improve the effectiveness and efficiency of the health care industry in general by establishing a level of protection for certain electronic health information; *Frequency:* Recordkeeping and Reporting—On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 4,000,000; *Total Annual Responses:* 4,000,000; Total Annual Hours: 64,539,263.

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of*

Information Collection: Application for Participation in the Medicare Care Management Performance Demonstration; *Form Number:* CMS–10165 (OMB#: 0938–0965); *Use:* The Medicare Care Management Performance (MCMP) Demonstration and its corresponding Report to Congress are mandated by the section 649 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Section 649 of the MMA provides for the implementation of a "pay for performance" demonstration under which Medicare would pay incentive payments to physicians who (1) adopt and use health information technology; and (2) meet established standards on clinical performance measures. This demonstration will be held in four states, Arkansas, California, Massachusetts, and Utah. Providers that are enrolled in the Doctors' Office Quality—Information Technology (DOQ–IT) project are eligible to participate in the demonstration. To enroll in the MCMP Demonstration, a physician/provider must submit an application form. The information collected will be used to assess eligibility for the demonstration; *Frequency:* Reporting—One-time only; *Affected Public:* Business or other for-profit; *Number of Respondents:* 800; *Total Annual Responses:* 800; Total Annual Hours: 133.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on December 13, 2005. CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Melissa Musotto, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 6, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–20517 Filed 10–13–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10064]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Minimum Data Set (MDS) for Swing Bed Hospitals and Supporting Regulations in 42 CFR 483.20 and 413.337; *Form No.:* CMS–10064 (OMB # 0938–0872); *Use:* As required under Section 1888(e)(7) of the Social Security Act, swing bed hospitals must be reimbursed under the skilled nursing facility prospective payment system. CMS uses the MDS data to reimburse swing bed hospitals for SNF-level care furnished to Medicare beneficiaries. The MDS3.0 is currently being developed with plans for field testing to begin in 2006 with the expectation of completion in 2007. At that time, CMS will analyze the data derived from the study, including the implementation of the new version of the MDS for swing bed hospitals. Since we do not have the MDS3.0 version available, we are requesting an extension for the current SB–MDS.; *Frequency:* Reporting—Other (days 5, 14, 30, 60, and 90 of stay); *Affected Public:* Not-for-profit institutions, and State, Local, and Tribal governments; *Number of Respondents:* 820; *Total Annual Responses:* 92,789; *Total Annual Hours:* 51,314.

To obtain copies of the supporting statement and any related forms for these paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB Desk Officer at the address below, no later than 5 p.m. on November 14, 2005. OMB Human Resources and Housing Branch, Attention: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 6, 2005.

Martique S. Jones,

Acting Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–20521 Filed 10–13–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 3, 2005, from 8 a.m. to 5:30 p.m., and on November 4, 2005, from 8 a.m. to 3:30 p.m.

Location: Holiday Inn Gaithersburg, 2 Montgomery Village Ave., Gaithersburg, MD 20879.

Contact Person: Donald W. Jehn or Pearline K. Muckelvene, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–

741–8138 (301–443–0572 in the Washington, DC area), code 3014519516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 3, 2005, in the morning, the committee will hear updates on the following topics: (1) West Nile Virus; (2) draft guidance on nucleic acid testing (NAT) for human immunodeficiency virus (HIV)–1 and hepatitis C virus (HCV): Testing, product disposition, and donor deferral and re-entry; (3) summary of the Department of Health and Human Services Advisory Committee on Blood Safety and Availability held on September 19 and 20, 2005; and (4) re-entry of donors deferred based on hepatitis B core antigen (anti-HBc) test results. The committee will discuss approaches to over-the-counter (OTC) home-use HIV test kits the rest of the day. On November 4, 2005, in the morning, the committee will hear information on serious adverse events resulting from interference with measurement of blood glucose following infusion of maltose-containing immune globulin intravenous (human) and will discuss Alpha-1-Proteinase Inhibitor products. In the afternoon, the committee will hear an overview of the research programs of the Office of Blood Research and Review, Center for Biologics Evaluation and Research, as presented to a subcommittee of the Blood Products Advisory Committee during their site visit on July 22, 2005, and discuss a subcommittee report.

Procedure: On November 3, 2005, the entire meeting is open to the public. On November 4, 2005, from 8 a.m. to 2:15 p.m. the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 25, 2005. Oral presentations from the public will be scheduled on November 3, 2005, between approximately 2 p.m. and 3:45 p.m. and on November 4, 2005, between 10:30 a.m. and 11 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 25, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 4, 2005, from 2:15 p.m. to 3 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), and to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The committee will discuss a subcommittee's report of the internal research programs in the Office of Blood Research and Review, CBER.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Donald W. Jehn or Pearline K. Muckelvene at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 6, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–20560 Filed 10–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting is open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held November 8, 2005, from 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Johanna M. Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *cliffordj@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting. The background material will become available no later than the day before the meeting and will be posted on FDA's Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm* under the heading "Oncologic Drugs Advisory Committee (ODAC)." (Click on the year 2005 and scroll down to ODAC meetings.)

Agenda: The committee will discuss new drug applications approved under 21 CFR 314.500 and 601.40 (subparts H and subpart E, respectively, accelerated approval regulations) in an open session to do the following: (1) Review the status of phase IV clinical studies; (2) identify difficulties associated with completion of phase IV commitments; and (3) provide advice to sponsors to assist in the planning and execution of postmarketing commitments of newly approved drugs. The committee will discuss phase IV commitments of: (1) new drug application (NDA) 50–718, DOXIL (doxorubicin hydrochloride liposome injection, Johnson and Johnson Pharmaceutical Research and Development, L.L.C.) for the treatment of acquired immune deficiency syndrome (AIDS) related Kaposi's sarcoma in patients with disease that has progressed on prior combination therapy or in patients who are intolerant to such therapy; (2) NDA 20–221/S–002, ETHYOL for injection (amifostine, MedImmune Oncology, Inc.) for reducing the cumulative renal toxicity associated with repeated administration of cisplatin in patients with advanced nonsmall cell lung cancer; (3) biologics license application (BLA) 103767/0, ONTAK (denileukin diftitox, Seragen Incorporated) for the treatment of patients with persistent or recurrent cutaneous T-cell lymphoma whose malignant cells express the CD25 component of the interleukin-2 receptor; (4) NDA 21–041, DEPOCYT (cytarabine liposome injection, SkyePharma Inc.) for the intrathecal treatment of lymphomatous meningitis; and (5) NDA 21–156, CELEBREX (celecoxib capsules, Pfizer, Inc.) for reducing the number of adenomatous colorectal polyps in familial adenomatous polyposis, as an adjunct to usual care (e.g., endoscopic surveillance, surgery); (6) NDA 21–174, MYLOTARG (gemtuzumab ozogamicin for injection, Wyeth Pharmaceuticals, Inc.) for the treatment of patients with CD33 positive acute myeloid leukemia

in first relapse who are 60 years of age or older and who are not considered candidates for other cytotoxic chemotherapy; and (7) BLA 103948/0, CAMPATH (alemtuzumab, ILEX Pharmaceuticals, L.P.) for the treatment of B-cell chronic lymphocytic leukemia (B-CLL) in patients who have been treated with alkylating agents and who have failed fludarabine therapy.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 1, 2005. Oral presentations from the public will be scheduled between approximately 2 p.m. to 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 1, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Johanna Clifford at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 6, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–20559 Filed 10–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Transmissible Spongiform Encephalopathies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 31, 2005, from 8 a.m. to 5:30 p.m.

Location: Holiday Inn Select, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512392. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 31, 2005, the committee will hear updates on the following topics: Current status of bovine spongiform encephalopathy (BSE) in the United States, incidence and prevalence worldwide of variant Creutzfeldt-Jakob Disease (vCJD), and a summary of FDA's device panel discussion on September 27, 2005, on criteria for considering label claims of effective decontamination for surgical instruments exposed to transmissible spongiform encephalopathy (TSE) agents. The committee will then discuss progress in development of a risk assessment model for vCJD in U.S.-licensed human plasma-derived Antihemophilic Factor (Factor VIII). The latter discussion will focus on selection of input parameters for the model. In the afternoon, the committee will discuss labeling claims for TSE clearance studies for blood component filters.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 21, 2005. Oral presentations from the public will be scheduled between approximately 12:30 p.m. and 1 p.m., and 4:15 p.m. and 4:45 p.m. on October 31, 2005. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 25, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact William Freas or Sheila Langford at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 6, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–20558 Filed 10–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22613]

National Maritime Security Advisory Committee

AGENCY: U.S. Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Maritime Security Advisory Committee (NMSAC) will hold a meeting to discuss various issues relating to national maritime security. This notice announces the date, time, and location for the meeting of the NMSAC.

DATES: NMSAC will meet on Tuesday, November 1, 2005, from 8:30 a.m. to 3:30 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 21, 2005. Any material requested to be distributed to each member of the Committee should reach the Coast Guard on or before October 24, 2005.

ADDRESSES: NMSAC will meet in Room 329 at the George Mason University School of Law, 3401 North Fairfax Drive, Arlington, VA 22201. Send written material and requests to make oral presentations to Mr. John Bastek, Commandant (G–MPS–2), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Bastek, Executive Secretary,

telephone 202–267–2722, fax 202–267–4130.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770).

Agenda of Meeting

The agenda includes the following:

(1) Welcome and administrative items.

(2) Briefings on national maritime security issues.

(3) National Symposium efforts.

(4) Homeport Training.

(5) Working Group Task Statements on Communications and Recovery Planning—coordination with Commercial Operations Advisory Committee (COAC).

Procedural

The meeting is open to the public. However, participation in NMSAC deliberations is limited to NMSAC members, Department of Homeland Security officials, and persons attending the meeting for special presentations. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Secretary no later than October 21, 2005. If you would like a copy of your material distributed to each member of the Committee in advance of the meeting, please submit 25 copies to the Executive Secretary no later than October 24, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Secretary as soon as possible.

Dated: October 11, 2005.

F.J. Sturm,

Captain, U.S. Coast Guard, Chief, Office of Port and Vessel and Facility Security.

[FR Doc. 05–20634 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Automated Commercial Environment (ACE): National Customs Automation Program Test of Automated Truck Manifest for Truck Carrier Accounts; Deployment Schedule

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

ACTION: General notice.

SUMMARY: The Bureau of Customs and Border Protection, in conjunction with the Department of Transportation, Federal Motor Carrier Safety Administration, is currently conducting a National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data. This document announces the next group, or cluster, of ports to be deployed for this test.

EFFECTIVE DATES: The ports identified in this notice, all in the State of Michigan, are expected to deploy in October, 2005, as provided in this notice. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Fitzpatrick via e-mail at *Thomas.Fitzpatrick@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data for truck carrier accounts was announced in a General Notice published in the **Federal Register** (69 FR 55167) on September 13, 2004. That notice stated that the test of the Automated Truck Manifest will be conducted in a phased approach, with primary deployment scheduled for no earlier than November 29, 2004. The document identified the ports of Blaine, Washington, and Buffalo, New York, as the original deployment sites.

The September 13, 2004, notice stated that subsequent deployment of the test will occur at Champlain, New York; Detroit, Michigan; Laredo, Texas; Otay Mesa, California; and Port Huron, Michigan, on dates to be announced. The notice stated that the Bureau of Customs and Border Protection (CBP) would announce the implementation and sequencing of truck manifest functionality at these ports as they occur. The test is to be expanded eventually to include ACE Truck Carrier Account participants at all land border ports, and subsequent releases of ACE will include all modes of transportation. The September 13, 2004, notice announced that additional participants and ports will be selected throughout the duration of the test.

Implementation of the Test

The test commenced in Blaine, Washington in December 2004, but not at Buffalo, New York. In light of experience with the implementation of the test in Blaine, Washington, CBP decided to change the implementation schedule and published a General Notice in the **Federal Register** on May 31, 2005 (70 FR 30964) announcing the changes.

As noted in the May 31, 2005, General Notice, the next deployment sites will be brought up as clusters. In most instances, one site in the cluster will be identified as the "model site" or "model port" for the cluster. This deployment strategy will allow for more efficient equipment set-up, site checkouts, port briefings and central training.

The ports identified belonging to the first cluster announced in the May 31, 2005, General Notice included the original port of implementation: Blaine, Washington. Sumas, Washington, was designated as the model port. The other ports of deployment in the cluster included the following: Point Roberts, WA; Oroville, WA (including sub ports); Boundary, WA; Danville, WA; Ferry, WA; Frontier, WA; Laurier, WA; Metaline Falls, WA; Nighthawk, WA; and Lynden, WA.

In a General Notice published in the **Federal Register** (70 FR 43892) on July 29, 2005, CBP announced that the test was being further deployed, in two clusters, at ports in the States of Arizona and North Dakota. The test was to be deployed at the following ports in Arizona on July 25, 2005: Douglas, AZ; Naco, AZ; Lukeville, AZ; Sasabe, AZ; and Nogales, AZ. Douglas, AZ was designated as the model port. The test was to be deployed at the following ports in North Dakota on August 15, 2005: Pembina, ND; Neche, ND; Noyes, ND; Walhalla, ND; Maida, ND; Hannah, ND; Sarles, ND; and Hansboro, ND. Pembina, ND, was designated as the model port.

New Cluster

Through this Notice, CBP announces the next cluster of ports to be brought up for purposes of implementation of the test. The test will be deployed at the following ports, in the State of Michigan, no earlier than the dates indicated (all in the year 2005): Windsor Tunnel, October 4; Barge Transport, October 5; Ambassador Bridge, October

7; Port Huron, October 14; Marine City, October 18; Algonac, October 18; and Sault St. Marie, October 28. No port in this cluster is designated as the "model port."

Previous NCAP Notices Not Concerning Deployment Schedules

On Monday, March 21, 2005, a General Notice was published in the **Federal Register** (70 FR 13514) announcing a modification to the NCAP test to clarify that all relevant data elements are required to be submitted in the automated truck manifest submission. That notice did not announce any change to the deployment schedule and is not affected by publication of this notice. All requirements and aspects of the test, as set forth in the September 13, 2004 notice, as modified by the March 21, 2005 notice, continue to be applicable.

Dated: October 6, 2005.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–20579 Filed 10–13–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Application for Participation in Biometric Device Performance Qualification Testing Program

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on one currently approved information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by December 12, 2005.

ADDRESSES: Comments may be mailed or delivered to Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer at the above address or by telephone (571) 227–1995 or facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0031; Application for Participation in Biometric Device Performance Qualification Testing Program. Section 4011, Provision for the Use of Biometric and Other Technology, in Title IV—Transportation Security, of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458, 118 Stat. 3638, 3712, Dec. 17, 2004) directs TSA to issue guidance for use of biometric technology in airport access control systems, including a list of qualified biometric devices and vendors, also known as a Qualified Products List (QPL).

In compliance, TSA has developed a process that examines the fitness of biometric technology for application to airport access control systems. The first step of the process will be for a manufacturer or vendor of a biometric device seeking TSA's evaluation of the device for placement on TSA's QPL to complete an application form, as well as to submit electronically via the Web a manufacturer's data package. The application form will be widely available to the public through TSA's Web address at *http://www.tsa.gov/public.* Go to the "Business Opportunities" link, then the "Current Opportunities" link.

As this specific qualification process is new, no historical data on the information collection burden exists. However, TSA estimates that the annual recordkeeping and reporting burden from the qualification process will be 800 hours, based on 100 responses (all collected electronically) at a rate of 8 hours per response. TSA will use the information collected to evaluate a biometric device's readiness for qualification performance testing, which supports TSA's obligation to produce a biometric QPL.

TSA published a notice in the **Federal Register** requesting emergency clearance of this collection from OMB on February 16, 2005 (70 FR 7956). OMB subsequently issued its approval of this collection on September 17, 2005, and assigned it OMB No. 1652–0031, with an expiration date of December 31, 2005.

Issued in Arlington, Virginia, on October 7, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–20578 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–41]

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.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, room 7266, Department of Housing and urban Development, 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 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also

published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5b–17, 5600 Fishers Lane, Rockville, MD 20857; (301 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed a suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. John Kelly, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0084; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; NAVY: Mr. Warren Meekins, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: October 6, 2005.

Mark R. Johnston,

Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 10/14/2005

Suitable/Available Properties

Buildings (by State)

Kansas

BG William Menninger
Army Reserve Center
2101 Washington Street
Helena Co: Shawnee KS 66607–
Landholding Agency: GSA
Property Number: 54200540001
Status: Surplus
Comment: 46,870 sq. ft. main bldg., 4 storage bldgs., 5121 sq. ft. vehicle maintenance bldg., easement restrictions
GSA Number: 7–D–KS–0522

Maryland

F. Boy Scouts Shed
Tract 403–48
Boonsboro Co: Washington MD
Landholding Agency: Interior
Property Number: 61200540008
Status: Excess
Comment: 378 sq. ft., needs rehab, off-site use only

Former Sera House
Tract 405–66
Middletown Co: Frederick MD 21769–
Landholding Agency: Interior
Property Number: 61200540009
Status: Excess
Comment: 1480 sq. ft. residence, needs rehab, off-site use only

Former Sera Shed
Tract 405–66
Middletown Co: Frederick MD 21769–
Landholding Agency: Interior
Property Number: 61200540010
Status: Excess
Comment: 80 sq. ft., needs rehab, off-site use only

New Jersey

Former Mussina House
Tract 307–21
Wantage Co: Sussex NJ
Landholding Agency: Interior
Property Number: 61200540005
Status: Excess
Comment: 1747 sq. ft. residence, needs rehab, off-site use only

Former Mussina Garage
Tract 307–21
Wantage Co: Sussex NJ
Landholding Agency: Interior
Property Number: 61200540006
Status: Excess
Comment: 730 sq. ft., needs rehab, off-site use only

Former Mussina Shed
Tract 307–21
Wantage Co: Sussex NJ
Landholding Agency: Interior
Property Number: 61200540007
Status: Excess
Comment: 480 sq. ft., needs rehab, off-site use only

New Mexico

Federal Building
517 Gold Avenue, SW
Albuquerque Co: Bernalillo NM 87102–
Landholding Agency: GSA
Property Number: 54200540005
Status: Excess
Comment: 273,027 sq. ft., 8 floors + basement, top two floors structurally unsafe to occupy, 3 additional floors do not meet local code requirements for occupancy, presence of asbestos/lead paint
GSA Number: 7–G–NM–0588

New York

F. Baron-Sousa House
Tract 284–43
Warwick Co: Orange NY
Landholding Agency: Interior
Property Number: 61200540002
Status: Excess
Comment: 1122 sq. ft. residence, needs rehab, presence of asbestos, off-site use only

Former Fernau House
Tract 284–45
Warwick Co: Orange NY
Landholding Agency: Interior
Property Number: 61200540003
Status: Excess
Comment: 2963 sq. ft. residence, needs rehab, presence of asbestos, off-site use only

Former Fernau Garage
Tract 284–45
Warwick Co: Orange NY
Landholding Agency: Interior

Property Number: 61200540004
Status: Excess
Comment: 840 sq. ft., needs rehab, off-site use only

Oklahoma

Maintenance Site
Route 1
Tupelo Co: Coal OK 74572–
Landholding Agency: GSA
Property Number: 54200540003
Status: Excess
Comment: 5046 sq. ft. office, 2000 sq. ft. garage, 336 sq. ft. storage, easement restrictions
GSA Number: 7–B–OK–0571

Vermont

Former Border Station
70 Main Street
Newport Co: VT 05857—
Landholding Agency: GSA
Property Number: 54200540004
Status: Excess
Comment: 5015 sq. ft., most recent use—office, possible asbestos/lead paint
GSA Number: 1–F–VT–439

Unsuitable Properties

Buildings (by State)

California

Bldg. 1781
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200540001
Status: Excess
Reasons: Secured Area Extensive deterioration

Bldgs. 76, 477, 720
Naval Air Station
Lemoore Co: CA 93246–
Landholding Agency: Navy
Property Number: 77200540002
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 398, 399, 404
Naval Base Point Loma
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200540003
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 388, 389, 390, 391
Naval Base Point Loma
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200540004
Status: Unutilized
Reason: Extensive deterioration

Illinois

Bldg. 2C
Naval Station
Great Lakes Co: IL 60088–2900
Landholding Agency: Navy
Property Number: 77200540005
Status: Excess
Reason: Secured Area

Michigan

Natl Biological Control Lab
2534 S. 11th Street
Niles Co: MI 49120–
Landholding Agency: GSA
Property Number: 54200540002
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–A–MI–824

New Jersey

Facility No. 2
Naval Weapons Station
Cape May Co: NJ
Landholding Agency: Navy
Property Number: 77200540006
Status: Excess
Reason: Extensive deterioration

North Carolina

Bldg. 216
Tract 42–101
Blowing Rock Co: Watauga NC 28605–
Landholding Agency: Interior
Property Number: 61200540001
Status: Unutilized
Reason: Extensive deterioration

Texas

Bldg. 1732
Naval Air Station
Corpus Christi Co: Neuces TX
Landholding Agency: Navy
Property Number: 77200540007
Status: Excess
Reasons: Secured Area Extensive deterioration

[FR Doc. 05–20450 Filed 10–13–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Reconsidered Final Determination To Decline To Acknowledge the Eastern Pequot Indians of Connecticut and the Paucatuck Eastern Pequot Indians of Connecticut

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Associate Deputy Secretary (ADS) has determined that the Eastern Pequot Indians of Connecticut and the Paucatuck Eastern Pequot Indians of Connecticut do not satisfy all seven criteria for acknowledgment as an Indian tribe in 25 CFR 83.7. This Reconsidered Final Determination (RFD) is final and effective upon the date of publication of this notice, pursuant to 25 CFR 83.11(h)(3).

EFFECTIVE DATE: The procedures defined by this notice are effective on October 14, 2005.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, MS: 34B–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240, phone (202) 513–7650.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Associate Deputy Secretary by Secretarial Order 3259, February 8, 2005, as amended on August 11, 2005.

This notice is based on a determination that the Eastern Pequot Indians of Connecticut (EP) and the Paucatuck Eastern Pequot Indians of Connecticut (PEP) do not satisfy all seven mandatory criteria for acknowledgment in 25 CFR 83.7.

A notice of the proposed finding to acknowledge the EP was published in the **Federal Register** on March 31, 2000, together with a notice of the proposed finding to acknowledge the PEP (65 FR 17294–17304). The original 180-day comment period on these proposed findings was extended twice at the request of the State of Connecticut (State). The actual closing of the comment period, August 2, 2001, was established as part of a scheduling order entered by the Federal District Court for Connecticut in *Connecticut* v. *Dept. of the Interior,* (No. 3:01–CV–88–AVC) (D. Conn. 2001).

The Department published final determinations (FDs) to acknowledge the two petitioners, EP and PEP, as one group, known as the Historical Eastern Pequot Tribe, in the **Federal Register** on July 1, 2002 (67 FR 44234).

On September 24, 2002, a group known as the "Wiquapaug Eastern Pequot Tribe" (WEP) filed a request for reconsideration of the FDs with the Interior Board of Indian Appeals (IBIA), and on September 26, 2002, the State and the Towns of Ledyard, North Stonington, and Preston, Connecticut (Towns) also filed requests for reconsideration of the FDs with the IBIA under the provision of 25 CFR 83.11.

On May 12, 2005, the IBIA vacated and remanded the FDs for reconsideration pursuant to 25 CFR 83.11(d)(2) and (e)(10). The IBIA ruled that the FDs incorrectly relied on "the State's continuous relationship and implicit recognition of the Eastern Pequot as a political entity as 'additional evidence' in support of demonstrating criteria 83.7(b) and 83.7(c) when the other evidence for a particular time period was insufficient" (41 IBIA 17). The IBIA concluded: "that the State and Towns have satisfied their burden of proof to show that a substantial portion of the evidence relied upon in the Assistant Secretary's determination was unreliable or of little probative value" (41 IBIA 23).

The IBIA decision identified items and issues to be addressed on reconsideration. In the first three issues

(IBIA items 1–3), the use of "state recognition" generally as evidence for criterion 83.7(b) or 83.7(c), the use of "implicit" state recognition in the FDs, and the non-citizenship status of the Eastern Pequot, the IBIA rejected the use made in the EP and PEP FDs of the historically continuous state relationship with the Eastern Pequot as evidence for criteria 83.7(b) and 83.7(c). The IBIA decision described the bases on which the state relationship could provide probative evidence, requiring a more specific articulation of how the state relationship reflected community and political influence as defined in 25 CFR 83.1 within the petitioners (41 IBIA 18).

The IBIA also referred items outside its jurisdiction as possible grounds for reconsideration. Item 4 referred by the IBIA, the State claim that absent the state relationship there was insufficient evidence to satisfy criterion 83.7(b) "community" in the 20th century. The RFD determined that the FDs had already evaluated and rejected the claims made by the State concerning this evidence. Therefore, Item 4 was not grounds to reconsider criterion 83.7(b) for community in the 20th century.

The RFD accepted Item 5 concerning evidence of a single political entity post-1973 as grounds for reconsideration. This item also affected the evaluation of the evidence under criterion 83.7(b) during the period 1973 to 2002 when the general conclusions about the state relationship were a factor in the FD. The RFD evaluated the specific state relationship with the Eastern Pequot after 1973 and concluded that it did not provide evidence concerning bilateral political processes within the Eastern Pequot as a single entity. The RFD concluded that a the Eastern Pequot as a single entity meets 83.7(b) and 83.7(c) from 1973 to the early 1980's. The RFD further found that EP and PEP had become separate groups in the early 1980's. It is the Department's policy not to encourage splits within recognized tribes, a policy equally applicable to groups that may be acknowledged. Here, the separation occurred after the petitioning process had started and was in the lifetimes of the adult membership. Because of the recentness of the split, EP and PEP neither separately or together demonstrate existence as a community, nor the exercise of political authority or influence from historical times until the present.

The RFD evaluated the arguments and evidence presented by the parties before the IBIA concerning two 1873 documents (Item 6). Based on this evaluation, the RFD modified the analysis in the FDs on the issue of the two 1873 documents, but otherwise confirmed the FDs. As to Item 7, the RFD corrected an erroneous reference in the FDs concerning evidence of residence on the reservation in the 19th century, but did not change the ultimate conclusion of the analysis in the FDs, that the historical tribe met criterion 83.7(b) for the colonial to 1873 period.

Item 8 concerning acknowledgment of a single tribe based on two acknowledgment petitioners, and Item 9, concerning tribal membership, raised issues that were addressed fully in the FDs and did not merit reconsideration.

Item 10 concerned due process and notice concerning the PFs' conclusions regarding the post-1973 period. The RFD concluded that the parties received actual notice and all due process required in order to submit argument and evidence in response to the proposed findings.

Therefore, Item 10 was not a ground for reconsideration. Item 11 concerned the February 11, 2000 notice, which limited BIA research to that necessary for verification and evaluation, and alleged procedural irregularities. The RFD concluded, as litigated in *Connecticut* v. *Dept. of the Interior*, that the notice concerned internal agency procedures that did not affect the regulations or any parties' substantive or procedural rights. Item 11 was not a ground for reconsideration of the FDs.

Numerous courts have upheld the Federal acknowledgment regulations and the Department's authority to issue them. Therefore, Item 12 was not a ground for reconsideration of the FDs.

The RFD reviewed the various arguments of the WEP referred by IBIA as outside its jurisdiction and found that none was a basis for reconsideration of the FDs.

The RFD reevaluated and reweighed the evidence in the record in accordance with the IBIA decision and the above conclusions concerning the other items referred by IBIA. On the mandatory criteria, the RFD revised the evaluation of criteria 83.7(b) and 83.7(c).

Criterion 83.7(b) "community": The RFD reviewed the evaluation of criterion 83.7(b) from colonial times through the twentieth century (until 1973) in the FDs, and found that the FDs did not rely on state recognition as evidence in concluding that there was sufficient evidence for criterion 83.7(b). There was more than sufficient evidence to demonstrate criterion 83.7(b) for that time period without the use of the state relationship. There was no reason to reconsider that portion of the FDs, which is, therefore, affirmed in the RFD.

The RFD reconsidered the post-1973 evidence concerning community. The historical Eastern Pequot tribe, including the families antecedent to the EP and PEP petitioners, met the requirements of criterion 83.7(b) from colonial times through the early 1980's as a single community. The petitioners were not separate communities in this time period. The loss of the Jackson family, who bridged the divide between the various family lines, the formation of two separate organizations that encompassed the membership, and the lack of social interaction and cohesion between those families in the EP membership and those in the PEP membership, demonstrated that there were two separate groups, represented by the EP and PEP petitioners, had formed in the early 1980s. In addition, as discussed in criterion 83.7(c), the state relationship did not provide evidence of a single political system. Therefore, the FD incorrectly relied on a single political system as evidence for a single community post-1973. The Eastern Pequot separation was a recent one and occurred within the lifetime of most of the adult members of the two groups. The two separate communities that existed after 1983 were not the same community as existed previously, although they shared a common origin.

The two groups did not demonstrate existence as a community from historical times to 2002. The RFD concluded that EP and PEP separately or together did not meet criterion 83.7(b) from historical times until the present, notwithstanding that as a single group, the historical Eastern Pequot from which the petitioners derived, met criterion 83.7(b) from early colonial times until the early 1980s.

Criterion 83.7(c) "political authority or influence": The RFD reviewed the evidence for political authority and found that the FDs did not rely on the state relationship as evidence for criterion 83.7(c) before 1913. Criterion 83.7(c) was demonstrated by other evidence for the colonial to 1913 period. Consequently, the conclusions in the FDs that the historical Eastern Pequot tribe, including the families antecedent to the EP and PEP petitioners, met criterion 83.7(c) until 1913 as a single group is affirmed. The petitioners did not separately exercise political influence in this time period because only a single community existed within which political influence was exercised and the evidence for political influence encompassed the entire community.

The RFD concluded that the petitioners did not meet criterion 83.7(c) from 1913 to 1973 as one group. Whereas the FDs relied on state

recognition in general as evidence during this period, based on the reasoning in the IBIA decision, the evidence for this period was reevaluated. The RFD concluded that there was insufficient evidence that there was political influence or authority within the group as a whole or in any portion of it between 1913 and 1973. This reevaluation concluded that there was insufficient evidence for Atwood I. Williams's leadership of all or a part of the group, and of interactions with the State that showed political activity within the group. The state relationship did not provide evidence in this time period.

The FDs relied on the state relationship as evidence and concluded that historical Eastern Pequot met criterion 83.7(c) from 1973 to 2002 as one group. Based on the reevaluation in accord with the IBIA decision, without reliance on the state relationship, the RFD concluded that the two petitioners meet criterion 83.7(c) as one group from 1973 to the early 1980's, and did not exercise political authority and influence as one group after that time. The two separate groups did not meet criterion 83.7(c) because of the recentness of the evolution and split into two separate groups, represented by the EP and PEP petitioners. No evidence was submitted concerning the petitioners after the date of the FDs to the IBIA, and the RFD did not evaluate them after that date.

Criteria 83.7(a),(d),(e),(f), and (g): The reevaluation of the post-1973 period in the grounds described in Item 5 resulted in the conclusion that the two petitioners formed separate communities after the early 1980's, rather than a single group. The evaluations of criteria 83.7(a),(d),(e),(f) and (g) have been revised to reflect this conclusion. The evaluations of criteria 83.7(a),(d),(e),(f), and (g) were not otherwise affected because they did not rely on the state relationship as evidence. Both petitioners met these criteria as separate groups.

The RFD is final and effective upon the date of publication of this notice in the **Federal Register**, pursuant to 25 CFR 83.11(h)(3).

Dated: October 11, 2005.

James E. Cason,

Associate Deputy Secretary.

[FR Doc. 05–20720 Filed 10–12–05; 2:26 pm]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Reconsidered Final Determination To Decline To Acknowledge the Schaghticoke Tribal Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Associate Deputy Secretary has determined that the Schaghticoke Tribal Nation (STN) does not satisfy all seven criteria for acknowledgment as an Indian tribe in 25 CFR 83.7. Upon the date of publication of this notice, pursuant to 25 CFR 83.11(h)(3), the Reconsidered Final Determination (RFD) is final and effective for the Department of the Interior (Department).

EFFECTIVE DATE: The procedures defined by this notice are effective on October 17, 2005.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment (OFA), MS: 34B–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240, phone (202) 513–7650.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Associate Deputy Secretary by Secretarial Order 3259, February 8, 2005, as amended on August 11, 2005.

This notice is based on a determination that the Schaghticoke Tribal Nation (STN) does not satisfy all of the seven mandatory criteria for acknowledgment in 25 CFR 83.7.

Several lawsuits filed in the Federal courts affected the history and administrative handling of the Schaghticoke Tribal Nation petition. Two of these were land claims suits under the Non-Intercourse Act, *Schaghticoke Tribal Nation* v. *Kent School Corp., Inc.*, Civil No. 3:98 CVO1113 (PCD) and *Schaghticoke Tribal Nation* v. *Connecticut Light and Power Company*, Civil No. 3:00 CV00820 (PCD). The third lawsuit is *United States of America* v. *43.47 Acres of Land, et al.*, Civil No. H–85–1078(PCD), filed on December 16, 1985, in which the U.S. sought to condemn certain lands on the Schaghticoke Reservation to become part of the Appalachian Trail. All three lawsuits involve the question of whether the STN is an Indian tribe.

The Department conducted its evaluation of this petitioner under a court-approved negotiated agreement between the Department, STN, and parties to the several, concurrent lawsuits mentioned above. This scheduling order, entered May 8, 2001, and subsequently amended, established timelines for submission of materials to the Department and deadlines for submission of comments, issuance of a proposed finding (PF), and issuance of a final determination (FD) which superseded the provisions of the acknowledgment regulations, 25 CFR part 83.

The Department published notice of the STN PF on December 11, 2002, and found against acknowledgment of STN. Following the comment and response periods and the submission of new evidence, the Department concluded, relying in part on the state relationship and a calculation of marriage rates within the Schaghticoke as carryover evidence for criterion 83.7(c), that STN met all the seven mandatory criteria for acknowledgment as an Indian tribe. In accordance with the court-approved negotiated schedule, on January 8, 2003, the Department provided the petitioner and interested parties with a copy of the Federal Acknowledgment Information Resource (FAIR) database used for the STN PF, together with the scanned images of documents that OFA researchers added to the administrative record in the course of preparing the STN PF, including materials that OFA requested from the State and the STN.

The Department issued the STN FD acknowledging the STN as an Indian tribe on January 29, 2004, and notice of the STN FD appeared in the **Federal Register** on February 5, 2004 (69 FR 5570). On May 3, 2004, the State of Connecticut (State), jointly with the Kent School Corporation, Connecticut Light and Power Company, the towns of Kent, Danbury, Bethel, New Fairfield, Newton, Ridgefield, Stamford, Greenwich, Sherman, Westport, Wilton, Weston, and the Housatonic Valley Council of Elected Officials, the Coggswell family group (CG), and the Schaghticoke Indian Tribe (SIT) petitioning group filed timely requests for reconsideration of the STN FD with the Interior Board of Indian Appeals (IBIA).

On May 12, 2005, the IBIA vacated the STN FD and remanded it to the Assistant Secretary—Indian Affairs for further work and reconsideration. The IBIA decision addressed a number of issues within the context of the related Federal acknowledgment decision of the Historical Eastern Pequot FD that was also vacated and remanded to the Department on May 12, 2005. IBIA linked the two cases because of their reliance on state recognition as

additional evidence for criterion 83.7(b) and 83.7(c).

In its request for reconsideration of the STN FD, the State challenged the use of the historically continuous state recognition and the state relationship as providing evidence for criterion 83.7(b) "community" and criterion 83.7(c). "political influence or authority." Moreover, the State argued that even if the use of the state relationship were to be upheld by IBIA in the case of the Historical Eastern Pequot, it should not be allowed for STN, since the STN FD, in the opinion of the State, "impermissibly" expanded the use of the state relationship as evidence of political influence or authority in the absence of evidence of political activity within the group (41 IBIA 34). In regard to the use of the state relationship as evidence, IBIA concluded:

> Today, in *Historical Eastern Pequot Tribe*, the Board concludes that the State of Connecticut's "implicit" recognition of the Eastern Pequot as a distinct political body—even if a correct characterization of the relationship—is not reliable or probative evidence for demonstrating the actual existence of community or political influence or authority within that group. The FD for STN used state recognition in the same way that we found to be impermissible in *Historical Eastern Pequot Tribe*. In addition, we agree with the State that the STN FD gives even greater probative value and evidentiary weight to such "implicit" state recognition, and therefore it constituted a substantial portion of the evidence relied upon. Therefore, in light of our decision in *Historical Eastern Pequot Tribe*, the Board vacates the FD and remands it for reconsideration in accordance with that decision (41 IBIA 34).

The IBIA also evaluated other issues raised by the State and other interested parties in the requests for reconsideration that were outside of its jurisdiction and referred these issues to the Department to consider. The State challenged the STN FD's calculations of marriage rates for the period 1801 to 1870 used for carryover evidence to satisfy criterion 83.7(c). Moreover, OFA submitted a "supplemental transmission" to IBIA regarding the calculation of marriage rates on December 2, 2004. Based on the allegation raised by the State regarding the marriage rate calculations, and within the context of the supplemental transmission, the IBIA concluded:

> Because we are already vacating and remanding the FD to the Assistant Secretary for reconsideration based on *Historical Eastern Pequot Tribe*, and because OFA has acknowledged problems with the FD's endogamy rate calculations—at a minimum, inadequate explanation—we conclude that this matter is best left to the Assistant Secretary on reconsideration. (41 IBIA 36).

The IBIA referred other allegations made by the State, SIT, and the CG based on the determination that it lacked jurisdiction over the issues. The first was the claim that the STN FD enrolled 42 non-STN members into the STN petitioning group. The SIT and the CG also raised the issue that the enrollment was not based on the notice, consent, or equal protection of those added to the STN rolls, that the 42 individuals in question were not sufficiently linked to STN, and the individuals were not a part of the STN social and political community. The RFD concluded that the STN FD should be reconsidered on the grounds that at least 33 of the 42 individuals on the STN list of "unenrolled members" were not members of STN because they had not consented to enroll. Under the regulations, one must consent to being a member of a petitioning group.

Criterion 83.7(b) "community": The STN PF found and the STN FD affirmed that STN met criterion 83.7(b), community, from first sustained contact to 1900 (STN PF, 15–16, STN FD, 18). The STN FD did not rely on the state relationship for criterion 83.7(b), community, for this period. Therefore, the RFD reaffirmed the STN FD for this time period, first sustained contact to 1900.

The RFD reanalyzed STN marriage rates, and found that marriage rates provided evidence in combination with other evidence sufficient to satisfy criterion 83.7(b) for the period 1801–1900. The STN FD did not rely on the state relationship for criterion 83.7(b), community, for the period 1900–1920. The STN FD used a combination of evidence including residential and intermarriage patterns to conclude that STN met criterion 83.7(b), community, between 1900 and 1920. The RFD reaffirmed the STN FD for this time period.

The STN FD relied on the state relationship as additional evidence for criterion 83.7(b), community, for the periods 1920–1940 and 1940–1967. The RFD reevaluated the state relationship with the STN, and concluded that it did not provide evidence of 83.7(b), community, within STN. The RFD reevaluated the evidence for community without the state relationship for these periods, and found that there was insufficient evidence for STN to meet criterion 83.7(b), community for 1920–1967.

The STN FD did not rely on state recognition for community for the period 1967–1996. Therefore, the STN FD conclusion that STN met criterion 83.7(b), community, for these years was affirmed.

For the period after 1996, the RFD concluded that at least the 33 of 42 individuals who specifically declined to consent to be part of the STN petitioner cannot be considered members of the STN group. The STN, thus, did not represent the entire Schaghticoke community from 1997 to the present and, therefore, did not meet criterion 83.7(b). Therefore, the STN did not meet criterion 83.7(b), community.

Criterion 83.7(c) "political influence or authority": The RFD affirmed the finding of the STN FD that the petitioner met the requirements of criterion 83.7(c) for political influence or authority from the colonial period to 1801. The STN FD used marriage rates for the periods 1801 to 1820 and 1841 to 1870 under criterion 83.7(b)(2)(ii) to provide carryover evidence under 83.7(c)(3). The RFD recalculated marriage rates for the period 1801 to 1900, and reversed the finding of the STN FD that marriage rates reached the 50 percent threshold to provide carryover evidence to meet 83.7(c). The RFD also reevaluated the evidence for residency rates for the period 1850 to 1902. The RFD affirmed the conclusion of the STN FD that the residency rates were not high enough to provide carryover evidence to meet criterion 83.7(c). The RFD reviewed the evidence for political influence or authority for the period 1801 to 1875, and found that there was insufficient evidence to satisfy criterion 83.7(c).

The RFD affirmed the finding of the STN FD that two Schaghticoke petitions to the State from the years 1876 and 1884 provided sufficient evidence of political influence or authority to meet criterion 83.7(c) for the years 1876–1884. The RFD reevaluated the evidence regarding an 1892 petition based on new evidence submitted to the IBIA, and found that this document did not provide evidence of the existence of political influence or authority within the Schaghticoke. Therefore, the RFD concluded that STN did not meet criterion 83.7(c) for the period 1885–1892.

The STN FD relied on the state relationship to provide sufficient evidence to meet criterion 83.7(c) for the period 1892 to 1936. The RFD reevaluated the state relationship and concluded that it did not provide additional evidence of political influence or authority within the Schaghticoke. The RFD reevaluated the remaining evidence for political influence or authority without the state relationship and found that there was insufficient evidence to meet criterion 83.7(c) for this period.

For the period 1936–1967, the RFD reevaluated the state relationship and concluded that it did not provide additional evidence of the exercise of political influence or authority within the Schaghticoke. The RFD concluded that the remaining evidence was insufficient to meet criterion 83.7(c) for the period 1936–1967.

The STN FD conclusion that STN exercised political influence or authority between 1967 and 1996 was affirmed. No arguments or new evidence were submitted regarding this conclusion.

STN did not meet criterion 83.7(c) for the period after 1996, in light of the known continued refusal of most of the 42 individuals to be members of the STN. STN's membership list does not reflect a significant portion of the political system. STN did not meet criterion 83.7(c) for the periods 1800–1875, 1885–1967, and 1997-present. Therefore, STN did not meet criterion 83.7(c).

STN met criteria 83.7(a), petitioner was identified as an American Indian group from 1900 to present; 83.7(d), petitioner has submitted its governing documents; 83.7(e), petitioner's membership has descent from an historical tribe; 83.7(f), petitioner does not have membership with any federally recognized tribes; and 83.7(g), petitioner has no Congressional legislation prohibiting the Federal relationship. No new arguments, evidence, or analysis merited revision of the STN FD evaluations of these criteria. The conclusions of the STN FD on these criteria were affirmed.

The Associate Deputy Secretary denied to acknowledge that STN was an Indian tribe as it failed to satisfy all of the seven mandatory criteria for Federal acknowledgment under the regulations. The STN petitioner did not submit evidence sufficient to meet criteria 83.7(b), community, and 83.7(c), political influence or authority, and, therefore, does not satisfy the requirements to be acknowledged as an Indian tribe.

Upon the date of publication of this notice, pursuant to 25 CFR 83.11(h)(3), the RFD is final and effective for the Department.

Dated: October 11, 2005.

James E. Cason,

Associate Deputy Secretary.

[FR Doc. 05–20719 Filed 10–12–05; 2:26 pm]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of the Hollister Draft Resource Management Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Hollister Field Office (California).

ACTION: Notice of Availability of the Hollister Draft Resource Management Plan and Draft Environmental Impact Statement.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan and Draft Environmental Impact Statement (RMP/EIS) for the Hollister Field Office.

DATES: Written comments on the Draft RMP/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: You may submit comments at the public meetings or by any of the following methods:

- Web Site: *http://www.ca.blm.gov/hollister* (subject to change).
- Fax: (831) 630–5000.
- Mail: 20 Hamilton Court, Hollister, California 95023.

FOR FURTHER INFORMATION CONTACT: Sky Murphy, (831) 630–5039.

SUPPLEMENTARY INFORMATION: The planning area covers approximately 278,000 surface acres and approximately 443,806 acres of subsurface mineral estate within the following California counties: Alameda, Contra Costa, Monterey, San Benito, San Mateo, Santa Clara, Santa Cruz, and portions of Fresno, Merced, and San Joaquin counties. The Hollister RMP, when completed, will provide management guidance for use and protection of the resources managed by the Hollister Field Office. The Hollister Draft RMP/EIS has been developed through a collaborative planning process and considers four alternatives. The primary issues addressed include: Recreation; protection of sensitive natural and cultural resources, livestock grazing; guidance for energy and mineral development; land tenure adjustments; and other planning issues raised during the scoping process.

The Draft RMP/EIS also includes consideration of the designation of Areas of Critical Environmental Concern (ACECs). The preferred alternative includes the following ACECs: Panoche-Coalinga ACEC—29,604 acres (existing); Panoche-Coalinga ACEC Expansion—40,514 acres (proposed); Joaquin Rocks ACEC/RNA—7,327 acres (proposed); Fort Ord Public Lands ACEC—approximately 15,200 acres (proposed); and Santa Cruz Coast Dairies ACEC—approximately 6,770 acres (proposed). Two additional ACECs, Joaquin Ridge ACEC—19,215 acres and Panoche-Coalinga ACEC—42,123 acres, were considered but not included in the preferred alternative. Use of public lands within these ACECs would vary, depending on the resources and/or values identified (see Chapter 2 of the Draft RMP/EIS), but would likely include limitations on motorized-vehicle use and other surface disturbing activities.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. CD and paper copies of the Hollister Draft RMP/EIS are available at the Hollister Field Office at the above address; CD copies are available at the California BLM State Office, 2800 Cottage Way, Sacramento, California 95825.

Robert Beehler,

Hollister Field Office Manager.

[FR Doc. 05–20618 Filed 10–13–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Sloan Canyon National Conservation Area (SCNCA)

AGENCY: Bureau of Land Management, Interior.

COOPERATING AGENCIES: Nevada Department of Wildlife, Nevada State Historic Preservation Office, Clark County Department of Comprehensive Planning, City of Henderson, City of Boulder City, Las Vegas Paiute Tribe,

Paiute Indian Tribe of Utah, Fort Mojave Indian Tribe.

ACTION: Notice of Availability.

SUMMARY: The Proposed Resource Management Plan and Final Environmental Impact Statement (RMP/FEIS) for the Sloan Canyon National Conservation Area is available to the public for a 30-day protest period. The proposed plan and associated FEIS were developed in accordance with the National Environmental Policy Act (NEPA) of 1969, the Federal Land Policy and Management Act (FLPMA) of 1976, and the Clark County Conservation of Public Land and Natural Resources Act of 2002 (Clark County Act) (Pub. L. 107–282).

DATES: BLM will accept written protests on the FEIS if postmarked within 30 calendar days of the date that a Notice of Availability is published in the **Federal Register** by the Environmental Protection Agency. Instructions for filing a protest are described in the Dear Reader letter in the PRMP and are also included in the Supplementary Information section of this notice.

ADDRESSES: The PRMP/FEIS and other associated documents or background information may be viewed and downloaded in PDF format at the project Web site at *http://wwwblm.gov/nhp/spotlight/state_info/planning.htm*. Copies of the PRMP/FEIS are available at the BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301. Reference copies are available for review during regular business hours at the following locations:

BLM Nevada State Office, 1340 Financial Blvd., Reno, NV 89502.

Paseo Verde Library, 280 S. Green Valley Pkwy, Henderson, NV 89012.

Boulder City Library, 701 Adams Blvd., Boulder City, NV 89005.

North Las Vegas Library, 2300 Civic Center Dr., North Las Vegas.

Summerlin Library, 1771 Inner Circle Dr., Las Vegas, NV 89134.

FOR FURTHER INFORMATION CONTACT: For further information visit the Web site (*http://www.blm.gov/nhp/spotlight/state_info/planning.htm*), E-mail: *sloan_information@bah.com*, or contact: Charles Carroll, BLM Las Vegas Field Office, Attn: Sloan Canyon NCA, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301, Telephone (702) 515–5000.

SUPPLEMENTARY INFORMATION: The SCNCA was officially designated in November, 2002 when the President signed into law the Clark County Act [Pub. L. 107–282] to preserve and protect a portion of southern Nevada's Mojave Desert for the benefit and enjoyment of present and future generations. The Clark County Act requires the BLM to develop a plan for the appropriate use and management of the Sloan Canyon NCA and North McCullough Wilderness within three years of enactment.

The Draft Resource Management Plan/Draft Environmental Impact Statement (DRMP/DEIS) for the Sloan Canyon NCA was released for public review on March 25, 2005. Comments that were received on the DRMP/DEIS during the 90-day review period from the public, cooperating agencies, and internal BLM review were considered in developing the PRMP.

The PRMP provides a framework for the future management direction and appropriate use of the Sloan Canyon NCA and North McCullough Wilderness. The Sloan Canyon NCA is comprised of approximately 48,400 acres of Mojave Desert terrain immediately south of Henderson, NV. The North McCullough Wilderness is entirely contained within the NCA and consists of approximately 14,800 acres.

The PRMP contains the proposed plan and summary of the changes made between the Draft RMP/EIS and PRMP. The agency preferred alternative, Alternative C, was developed to allow moderate development of facilities and uses while conserving and protecting the resources of the SCNCA. Some elements of the draft Alternative C were modified in consideration of comments received on the Draft RMP/EIS and further review by BLM and the cooperating agencies listed above. The PRMP/FEIS describes the predictable impacts of the proposed plan and contains a summary of written and verbal comments received during the public review period, and responses to the comments received. The PRMP focuses on the comprehensive management of resources in the Sloan Canyon NCA including managing recreational uses and the protection of the Sloan Canyon Petroglyph Site.

The resource management planning process includes an opportunity for public administrative review of the proposed land use planning decisions during a 30-day protest period following the publication of the PRMP. Any person who participated in the planning process for this PRMP, and has an interest which is or may be adversely affected, may protest approval of this PRMP and land use planning decisions contained within it (see 43 CFR 1610.5–2) during this 30-day period. Only those persons or organizations who participated in the planning process leading to the PRMP may protest. The protesting party may raise only those issues submitted for the record during the planning process leading up to the publication of this PRMP. These issues may have been raised by the protesting party or others. New issues may not be brought into the record at the protest stage. The 30-day period for filing a plan protest begins when the EPA publishes in the **Federal Register** its Notice of Availability of the final environmental impact statement containing the PRMP. There is no provision for any extension of time. To be considered "timely" the protest, along with all attachments, must be filed and postmarked no later than the last day of the protest period. A letter of protest must be filed in accordance with the planning regulations, 43 CFR 1610.5–2(a)(1). Protests must be in writing. E-mail or faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the E-mail or faxed protests as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*. If sent by regular mail, send to: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035. For overnight mailing, send to: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036. In order to be considered complete, the protest must contain, at minimum, the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the part or parts of the PRMP and the issue or issues being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, maps, etc., included in the document.

3. A copy of all documents addressing the issue(s) that the protesting party submitted during the planning process or a statement of the date they were discussed for the record.

4. A concise statement explaining why the protestor believes the Nevada BLM State Director's proposed decision is believed to be incorrect. This is a critical part of your protest, therefore document all relevant facts. As much as possible, reference or cite the planning documents, or available planning records (e.g. meeting minutes or summaries, correspondence, etc.).

Upon resolution of any protests, an Approved Plan and Record of Decision will be issued. The Approved Plan will be mailed to all who participated in the planning process and will be available to all interested parties through the above Web site, or by mail upon request.

Juan Palma,

Field Manager, Las Vegas.

[FR Doc. 05–20617 Filed 10–13–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–056–05–1610–DR–011H; HAG 05–155]

Notice of Availability of the Record of Decision for the Upper Deschutes Resource Management Plan (RMP) and Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: In accordance with the National Environmental Policy Act, the Federal Land Policy and Management Act, and Bureau of Land Management (BLM) policies, the BLM announces the availability of the Record of Decision (ROD) for the Upper Deschutes RMP located in Klamath, Deschutes, Crook, and Jefferson counties in Central Oregon. The Oregon/Washington State Director has approved the RMP/ROD, which becomes effective immediately.

ADDRESSES: Copies of the Upper Deschutes RMP/ROD are available upon request from the Prineville District Office, Bureau of Land Management, 3050 NE Third St., Prineville, Oregon 97754 or via the Internet at *http://www.or.blm.gov/prineville/* or by calling (541) 416–6700.

FOR FURTHER INFORMATION CONTACT: Teal Purrington, Project Manager, BLM, Prineville District Office, 3050 NE., Third St., Prineville, Oregon 97754 or at (541) 416–6700.

SUPPLEMENTARY INFORMATION: The Upper Deschutes RMP/ROD was developed with broad public participation through a four-year collaborative planning process. This RMP/ROD addresses management of approximately 400,000 acres of public land in Central Oregon. The Upper Deschutes RMP/ROD is designed to achieve or maintain desired future conditions developed through the planning process. It includes a series of management actions to meet the desired resource conditions for upland and riparian vegetation, wildlife habitats, cultural and visual resources, livestock grazing, special forest products, minerals and mineral materials, military use, recreation, land classifications and rights-of-way, and travel management.

With one exception, the approved Upper Deschutes RMP is essentially the same as Alternative 7 in the Proposed Upper Deschutes RMP and Final EIS, published in January 2005. The BLM received 16 protests on the Proposed Upper Deschutes RMP and Final EIS. In response to protests, a decision was made to allow "geocaching" activities within Wilderness Study Areas under specific monitoring and mitigation measures described in the RMP.

Dated: August 3, 2005.

James G. Kenna,

Associate State Director, Oregon/Washington BLM.

[FR Doc. 05–20616 Filed 10–13–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, 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) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held November 2, 2005 from 9:15 a.m. to 4 p.m.

ADDRESSES: Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8500.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics include: Manager updates on current land management issues; a South Park Land Tenure Plan Amendment update and travel management planning. All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm.*

Dated: October 7, 2005.

Linda McGlothlen,

Acting Royal Gorge Field Manager.

[FR Doc. 05–20592 Filed 10–13–05; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–06–1420–BJ]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775–861–6541.

SUPPLEMENTARY INFORMATION:

1. The plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on April 21, 2005:

The plat, in three (3) sheets, representing the dependent resurvey of portions of the south and north boundaries, a portion of the subdivisional lines, and the subdivision of sections 4, 9, 16, 27 and 33, Township 11 South, Range 47 East, Mount Diablo Meridian, Nevada, under Group No. 772, was accepted April 19, 2005.

The plat, in two (2) sheets, representing the dependent resurvey of a portion of the subdivisional lines and Mineral Survey No. 2934, and the subdivision of sections 5 and 17, Township 12 South, Range 47 East, Mount Diablo Meridian, Nevada, under

Group No. 772, was accepted April 19, 2005.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

2. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on July 22, 2005:

The plat representing the dependent resurvey of the First Standard Parallel South, through a portion of Range 41 East, and the dependent resurvey of portions of the south and east boundaries, a portion of the subdivisional lines, and a portion of the subdivision of section 36, the subdivision of section 35, and the further subdivision of section 36, Township 5 South, Range 40 East, Mount Diablo Meridian, Nevada, under Group No. 804, Nevada, was accepted July 21, 2005.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines and the subdivision of section 2, Township 6 South, Range 40 East, Mount Diablo Meridian, Nevada, under Group No. 804, Nevada, was accepted July 21, 2005. These surveys were executed to meet certain administrative needs of the Bureau of Land Management and the Bureau of Indian Affairs.

3. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on September 13, 2005:

The supplemental plat, showing a subdivision of lot 1, sec. 23, T. 19 S., R. 61 E., Mount Diablo Meridian, Nevada, was accepted September 9, 2005.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

4. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on September 29, 2005:

The supplemental plat, showing a subdivision of original lot 4, sec. 21, T. 3 S., R. 35 E., Mount Diablo Meridian, Nevada, was accepted September 27, 2005.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

5. The Plats of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on the first business day after thirty (30) days from the publication of this notice:

The plat representing the dependent resurvey of the Seventh Standard Parallel North, through a portion of Range 32 East; and the dependent resurvey of a portion of the west boundary of Township 36 North, Range 33 East; and the survey of a portion of the south boundary of Township 37 North, Range 33 East; and the survey of a portion of the subdivisional lines of Township 36 North, Range 32 East, Mount Diablo Meridian, Nevada, under Group No. 803, was accepted September 27, 2005.

The plat representing the independent resurvey of a portion of the south boundary and the east boundary, and the survey of a portion of the subdivisional lines of Township 37 North, Range 32 East, Mount Diablo Meridian, Nevada, under Group No. 803, was accepted September 27, 2005.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

6. Subject to valid existing rights, the provisions of existing withdrawals and classifications, the requirements of applicable laws, and other segregations of record, these lands are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or before the official filing of the Plats of Survey described in paragraph 5, shall be considered as simultaneously filed at that time. Applications received thereafter shall be considered in order of filing.

7. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: October 3, 2005.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 05–20565 Filed 10–13–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0027 and 1029–0036

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for 30 CFR Parts 740 and 780 which relate to surface coal mining and reclamation operations on Federal lands, and Surface mining permit applications—minimum requirements for reclamation and operation plans respectively. These collection requests have been forwarded to the Office of Management and budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by November 14, 2005, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov*.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at *IORA_Docket@omb.eop.gov*, or by facsimile to (202) 395–6566. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov*. Please reference 1029–0027 for Part 740, and 1029–0036 for Part 780 in your correspondence.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR Part 740, Surface Coal Mining and Reclamation Operations on Federal Lands, and 30 CFR Part 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans. OSM is requesting a 3-year term of approval for each information collection activity.

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 these collections of

information are 1029–0027 for Part 740, and 1029–0036 for Part 780.

As required under 5 CFR 1320.8(d), **Federal Register** notices soliciting comments on these collections of information was published on June 7, 2005 (70 FR 33191). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: 30 CFR Part 740—General requirements for surface coal mining and reclamation operations on Federal lands.

Frequency of Collection: Once.

OMB Control Number: 1029–0027.

Summary: Section 523 of SMCRA requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information requested is needed to assist the regulatory authority determine the eligibility of an applicant to conduct surface coal mining operations on Federal lands.

Description of Respondents: Applicants for surface coal mine permits on Federal lands and State regulatory authorities.

Total Annual Responses: 42.

Total Annual Burden Hours for Applicants: 2,602.

Total Annual Burden Hours for State Regulatory Authorities: 800.

Total Annual Burden Hours for All Respondents: 3,402.

Title: 30 CFR Part 780—Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.

OMB Control Number: 1029–0036.

Summary: Section 507(b), 508(a), 510(b), 515(b) and (d), and 522 of Public Law 95–87 require applicants to submit operations and reclamation plans for coal mining activities. Information collection is needed to determine whether the plans will achieve the reclamation and environmental protections pursuant to the Surface Mining Control and Reclamation Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application request.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mine permits on Federal land and State regulatory authorities.

Total Annual Responses: 505.

Total Annual Burden Hours for Applicants: 146,376.

Total Annual Burden Hours for State Regulatory Authorities: 88,752.

Total Annual Burden Hours for All Respondents: 235,128.

Total Annual Burden Costs for All Respondents: $2,258,045.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections, and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control numbers in all correspondence.

Dated: August 10, 2005.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 05–20573 Filed 10–13–05; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0092 and 1029–0107

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR 745, State-Federal cooperative agreements; and 30 CFR Part 887, Subsidence Insurance Program Grants. These collection requests have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by November 14, 2005, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov*. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202—SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 Part 1 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR 745, State-Federal cooperative agreements; and 30 CFR Part 887, Subsidence insurance program grants. OSM is requesting a 3-year term of approval for each information collection activity.

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 these collections are 1029–0092 for Part 745, and 1029–0107 for Part 887.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on April 27, 2005 (70 FR 21811). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: State-Federal cooperative agreements—30 CFR 745.

OMB Control Number: 1029–0092.

Summary: 30 CFR 745 requires that States submit information when entering into a cooperative agreement with the Secretary of the Interior. OSM uses the information to make findings that the State has an approved program and will carry out the responsibilities mandated in the Surface Mining Control and Reclamation Act to regulate surface coal mining and reclamation activities on Federal lands.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments that regulate coal operations.

Total Annual Responses: 8.

Total Annual Burden Hours: 335.

Total Annual Non-Wage Costs: $0.

Title: Subsidence Insurance Program Grants—30 CFR 887.

OMB Control Number: 1029–0107.

Summary: States and Indian tribes having an approved reclamation plan may establish, administer and operate self-sustaining State and Indian Tribe-administered programs to insure private property against damages caused by land subsidence resulting from underground mining. States and Indian tribes interested in requesting monies for their insurance programs would apply to the Director of OSM.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: States and Indian tribes with approved coal reclamation plans.

Total Annual Responses: 1.

Total Annual Burden Hours: 8.

Total Annual Non-Wage Costs: $0.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to OMB control number 1029–0092 for Part 745 and 1029–0107 for Part 887 in your correspondence.

Dated: June 28, 2005.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 05–20574 Filed 10–13–05; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–309–A and B (Second Review)]

Magnesium From Canada

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty orders on magnesium from Canada.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty orders on magnesium from Canada would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews 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: October 4, 2005.

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 these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On October 4, 2005, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (70 FR 38199, July 1, 2005) was adequate, but found that the respondent interested party group response was inadequate. The Commission also found that other circumstances warranted conducting full reviews.[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 11, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20621 Filed 10–13–05; 8:45 am]

BILLING CODE 7020–02–P

[1] Commissioner Jennifer A. Hillman dissenting.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–531]

In the Matter of Certain Network Controllers and Products Containing Same; Notice of Decision Not To Review an Initial Determination Granting Complainant's Motion To Terminate the Investigation Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on September 19, 2005, granting complainant's motion to terminate the investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3115. Copies of the public version of the IDs and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On January 19, 2005, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Marvell International, Ltd. of Hamilton, Bermuda ("Marvell"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain network controllers and products containing same by reason of infringement of claims 68, 70, and 71 of U.S. Patent No. 6,462,688 (the "688 patent"), and claims 22–32, 54, and 55 of U.S. Patent No. 6,775,529 (the "529 patent"). 70 FR

3067 (January 19, 2005). The complainant named Realtek Semiconductor Corporation of Hsinchu, Taiwan, and Real Communications, Inc., of San Jose, CA (collectively, "Realtek"), as respondents. Subsequently, the complaint and notice of investigation were amended to add an additional respondent, BizLink Technology, Inc. ("BizLink").

On August 31, 2005, complainant Marvell moved to terminate the investigation in whole pursuant to 19 U.S.C. 1337(c) and 19 CFR 210.21 based on a settlement agreement. On September 12, 2005, respondents Realtek and BizLink filed a response to the motion. Respondents do not oppose the motion to terminate. On the same day, the Commission investigative attorney ("IA") filed a response in support of the motion. On September 16, 2005, Marvell filed a reply to respondents' and the IA's responses.

On September 19, 2005, the ALJ issued an ID (Order No. 21) granting complainant's motion. No party petitioned for review of the ALJ's ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: October 7, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20571 Filed 10–13–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–636–638 (Second Review)]

Stainless Steel Wire Rod From Brazil, France, and India

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on stainless steel wire rod from Brazil, France, and India.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews 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: October 4, 2005.

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 these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On October 4, 2005, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (70 FR 38207, July 1, 2005) was adequate, and that the respondent interested party group response with respect to France was adequate, but found that the respondent interested party group responses with respect to Brazil and India were inadequate. However, the Commission determined to conduct full reviews concerning subject imports from Brazil and India to promote administrative efficiency in light of its decision to conduct a full review with respect to subject imports from France. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 11, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20620 Filed 10–13–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–510; Enforcement Proceeding]

In the Matter of Systems for Detecting and Removing Viruses or Worms, Components Thereof, and Products Containing Same; Notice of Institution of Formal Enforcement Proceeding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to a cease and desist order issued at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the public version of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on June 3, 2004, based on a complaint filed by Trend Micro Inc. ("Trend Micro") of Cupertino, California. 69 FR 32044–32045 (June 8, 2004). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation into the United States, or the sale within the United States after importation of certain systems for detecting and removing viruses or worms, components thereof,

and products containing same by reason of infringement of claims 1–22 of the '600 patent. The notice of investigation named Fortinet, Inc. ("Fortinet") of Sunnyvale, California as the sole respondent.

On May 9, 2005, the ALJ issued his final ID finding a violation of section 337 based on his findings that claims 4, 7, 8, and 11–15 of the '600 patent are not invalid or unenforceable, and are infringed by respondent's products. The ALJ also found that claims 1 and 3 of the '600 patent are invalid as anticipated by prior art and that a domestic industry exists. He also issued his recommended determination on remedy and bonding.

On July 8, 2005, the Commission issued a notice that it had determined not to review the ALJ's final ID on violation, thereby finding a violation of Section 337. 70 FR 40731 (July 14, 2005). The Commission also requested briefing on the issues of remedy, the public interest, and bonding. *Id.* Submissions on the issues of remedy, the public interest, and bonding were filed on July 18, 2005, by all parties. All parties filed response submissions on July 25, 2005. On August 8, 2005, the Commission terminated the investigation, and issued a limited exclusion order and a cease and desist order covering respondent's systems for detecting and removing viruses or worms, components thereof, and products containing same covered by claims 4, 7, 8, and 11–15 of the '600 patent.

On September 13, 2005, complainant Trend Micro Inc. filed a complaint for enforcement proceedings of the Commission's remedial orders. Trend Micro asserts that respondent Fortinet, and its distributors, have circumvented the cease and desist order by continuing to advertise, market, sell and offer for sale in the United States the imported infringing products and antivirus features of Fortinet's infringing software.

The Commission, having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding contained in Commission rule 210.75, has determined to institute formal enforcement proceedings to determine whether Fortinet is in violation of the Commission's cease and desist order issued in the investigation, and what if any enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) Complainant Trend Micro, (2) respondent Fortinet, and (3) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

By order of the Commission.

Issued: October 7, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20572 Filed 10–13–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–860 (Review)]

Tin- and Chromium-Coated Steel Sheet from Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on tin- and chromium-coated steel sheet from Japan.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on tin- and chromium-coated steel sheet from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. 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: October 4, 2005.

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: On October 4, 2005, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (70 FR 38210, July 1, 2005) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 11, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20622 Filed 10–13–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 7, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13,44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *Mills.Ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

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

Agency: Employment and Training Administration (ETA).

Type of Review: New Collection.

Title: Evaluation of State Worker Profiling Models.

OMB Number: 1205–0NEW.

Frequency: Other; One-time Collection.

Affected Public: State, local, or tribal government.

Type of Response: Mandatory.

Number of Respondents: 53.

Annual Responses: 53.

Average Response Time: 32 hours for survey and data collection.

Total Annual Burden Hours: 1696.

Total Annualized Capital/Startup Costs: $58,427.

Total Annual Costs (operating/maintaining systems or purchasing services): $58,427 (one-time collection).

Description: This project will evaluate the predictions of State worker profiling models and develop guidance for improvement.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–20591 Filed 10–13–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[05–148]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). NASA will utilize the information collected to determine whether the Agency's recruitment efforts are reaching all segments of the country.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA Reports Officer, NASA Headquarters, 300 E Street, SW., Mail Suite 6M70, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection that is used to ensure NASA collects racial and ethnic data information from on-line job applicants to determine if NASA's recruitment efforts are reaching all segments of the country, as required by Federal law.

II. Method of Collection

NASA uses electronic methods to collect information from collection respondents.

III. Data

Title: NASA Voluntary On-Line Job Applicant Racial and Ethnic Data.

OMB Number: 2700–0103.

Type of Review: Renewal.

Affected Public: Individuals or households; Federal government.

Number of Respondents: 40,000.

Responses per Respondent: 5 minutes.

Annual Responses: 40,000.

Hours per Request: 5 min/request.

Annual Burden Hours: 3,334.

Frequency of Report: On occasion.

Estimated Total Annual Cost: $0.

Dated: October 6, 2005.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–20561 Filed 10–13–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 15 and July 27, 2005, the National Science Foundation published notices in the **Federal Register** of permit applications received. Permits were issued on October 5, 2005 to:

J. Allan Campbell (Permit No. 2006–017).

George Steinmetz (Permit No. 2006–020).

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 05–20626 Filed 10–13–05; 8:45 am]

BILLING CODE 7555–01–M

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium

under part 4006 applies to premium payment years beginning in October 2005. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in November 2005. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the fourth quarter (October through December) of 2005.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Funding Equity Act of 2004, for premium payment years beginning in 2004 or 2005, the required interest rate is the "applicable percentage" (currently 85 percent) of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid. Thus, the required interest rate to be used in determining variable-rate premiums for premium payment years beginning in October 2005 is 4.62 percent (*i.e.*, 85 percent of the 5.44 percent composite corporate bond rate for September 2005 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between November 2004 and October 2005.

For premium payment years beginning in:	The required interest rate is:
November 2004	4.73
December 2004	4.75
January 2005	4.73
February 2005	4.66
March 2005	4.56
April 2005	4.78
May 2005	4.72
June 2005	4.60
July 2005	4.47
August 2005	4.56
September 2005	4.61
October 2005	4.62

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the fourth quarter (October through December) of 2005, as announced by the IRS, is 7 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	12/31/02	6
1/1/03	9/30/03	5
10/1/03	3/31/04	4
4/1/04	6/30/04	5
7/1/04	9/30/04	4
10/1/04	3/31/05	5
4/1/05	9/30/05	6
10/1/05	12/31/05	7

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the fourth quarter (October through December) of 2005 (*i.e.*, the rate reported for September 15, 2005) is 6.50 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	12/31/02	4.75
1/1/03	9/30/03	4.25
10/1/03	9/30/04	4.00
10/1/04	12/31/04	4.50
1/1/05	3/31/05	5.25
4/1/05	6/30/05	5.50
7/1/05	9/30/05	6.00
10/1/05	12/31/05	6.50

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in November 2005 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 7th day of October 2005.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 05–20580 Filed 10–13–05; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52573; File No. SR–NSX–2005–07]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing of Proposed Rule Change, and Amendment Nos. 1, 2, and 3, Thereto, Relating to the Creation of a Regulatory Oversight Committee

October 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2005, the National Stock Exchange SM ("NSX" SM or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NSX. On August 17, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. On August 18, 2005, the Exchange filed Amendment No. 2 to the proposed rule change. On October 6, 2005, the Exchange filed Amendment No. 3 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the text of Article VI, Section 1.1 of the Exchange's By-Laws to allow it to create, and specifically identify, a Regulatory Oversight Committee ("ROC") in accordance with the agreed upon undertakings contained in Section F.1. of the Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Sections 19(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Sanctions ("Order") entered May 19, 2005.[4] The text of the proposed rule change, including the proposed charter for the ROC, is below.[5] Proposed new language is in *italics*.

* * * * *

Code of Regulations (By-Laws) of National Stock Exchange Article VI

Committees

Section 1. Establishment of Committees

1.1. Committees

There shall be a *Regulatory Oversight Committee*, a Membership Committee, a Business Conduct Committee, a Securities Committee, an Appeals Committee, a Nominating Committee, and such other committees as may be established from time to time by the Board. Committees shall have such authority as is vested in them by the By-Laws or Rules or as is delegated to them by the Board. All Committees are subject to the control and supervision of the Board.

* * * * *

NSX REGULATORY OVERSIGHT COMMITTEE CHARTER

The Regulatory Oversight Committee (the "ROC") shall be responsible to oversee all of the National Stock Exchange's ("NSX" or the "Exchange") regulatory functions and responsibilities and to advise regularly the NSX's Board of Directors about NSX's regulatory matters.

A. The responsibilities of the ROC shall be to: (i) oversee the NSX's regulatory functions to enforce compliance with the federal securities laws and NSX rules, including monitoring the design, implementation, and effectiveness of NSX's regulatory programs; (ii) recommend the NSX Board an adequate operating budget for NSX's regulatory functions; (iii) approve the promulgation, filing, or issuance of new rules, rule amendments, rule interpretations, and regulatory circulars; (iv) take any other action necessary to fulfill its oversight and advisory responsibilities; and (v) adopt policies and procedures to ensure the independence of the Chief Regulatory Officer (the "CRO"). For the purpose of strengthening the ROC oversight procedures, the CRO shall certify compliance with the required items of the SEC Order to the ROC on a form and frequency basis set by the ROC.

The CRO shall have the authority to require such additional compliance certification from the staff as he deems appropriate and in such forms as he may prescribe.

B. The ROC shall be authorized to retain, at NSX's expense, outside counsel and consultants as it deems appropriate to carry out its responsibilities.

C. Meetings of the ROC shall be called by the Chairman of the ROC or at the request of a majority of the members of the ROC or the CRO. On at least an annual basis, the ROC shall report to the NSX Board on the state of the Exchange's regulatory program.

D. The ROC shall create and maintain complete minutes of all of its meetings, and shall also create and maintain records reflecting the ROC's recommendations or proposals made to NSX Board, and NSX Board's decision as to each such recommendation proposal.

E. In the event that the ROC's recommended operating budget for NSX's regulatory functions either: (1) is less than the previous year's budget by a material amount, (2) is rejected by the NSX Board, (3) is reduced by the NSX Board by a material amount, or (4) is altered by the NSX Board in a manner that, in the judgment of the ROC, materially impairs the ability of NSX to meet its regulatory obligations, then NSX shall, within fifteen (15) business days of such NSX Board action, notify the Director of the Commission's Division of Market Regulation in writing, providing copies of all minutes and other records reflecting the ROC's budget proposal and the NSX Board's decision regarding such proposal.

Composition

The Committee members shall be comprised of no less than three members, who have been appointed by the Chairman with the approval of the Board in a composition consistent with federal securities laws and the Exchange By-Laws and Rules. At a minimum, the ROC members shall not be, nor have been during the preceding three years, employees of NSX or any NSX member firm. The ROC shall elect a Chairperson from among its members.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposal and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 3 replaced and superseded the original filing, as amended by Amendments Nos. 1 and 2, in its entirety.

[4] *See In the Matter of National Stock Exchange and David Colker*, Securities Exchange Act Release No. 51715 (May 19, 2005).

[5] After consultation with staff, the Exchange is filing the Charter for the Regulatory Oversight Committee (the "ROC Charter") as part of this Rule Change. Accordingly, the Exchange represents that any changes (amendments or deletions) to the ROC Charter will be filed for approval as part of a filing pursuant to Rule 19b–4 (17 CFR 240.19b–4).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In accordance with the agreed upon undertakings provided in Section F.1. of the Order, the NSX is proposing to create a ROC through the submission of this rule change. In that regard, the NSX is seeking approval of an amendment to the Exchange By-Laws to specifically identify the ROC as an Exchange committee. The composition, scope of responsibilities, and functions of the ROC will be described in the ROC Charter, which would include provisions that mirror the terms of the undertaking[6] along with certification procedures similar to those prescribed by Sarbanes-Oxley and which are also consistent with the certification procedures contained in the Order.

The ROC members shall be comprised of no less than three members, who have been appointed by the NSX Chairman with the approval of the Board in a composition consistent with federal securities laws and the Exchange By-Laws and Rules. At a minimum, the ROC members shall not be, nor have been during the preceding three years, employees of the NSX or any NSX member firm. The ROC shall elect a Chairperson from among its members.

With respect to scope of responsibilities, the ROC is a committee of the NSX Board that is responsible for oversight of all NSX regulatory functions. The ROC is also responsible for keeping the NSX Board informed, on a regular basis, concerning the Exchange's regulatory functions, for providing advice to the Board concerning those functions, and for making recommendations to the Board for NSX action with respect to regulatory matters. The scope of responsibilities, as detailed in the Commission's Order, is contained in the ROC Charter.

As detailed in the ROC Charter, the ROC's functions include responsibility for the oversight of all of NSX's regulatory functions in order to promote and enforce compliance with the federal securities laws and the NSX rules, including reviewing with the Exchange's Chief Regulatory Officer (the "CRO") and other appropriate regulatory personnel various aspects of the design, implementation, and effectiveness of NSX's regulatory programs. The ROC will also review, revise and/or approve the CRO's recommendation for a regulatory budget to formulate the ROC's recommendation of an adequate operating budget and staffing level for NSX's regulatory function to the Board. In addition, the ROC will review, evaluate, and, if appropriate, recommend to the Board the implementation of any and all actions recommended by the CRO and the Regulatory Services Division (the "Division") to fulfill the Division's and the ROC's oversight and advisory responsibilities. The ROC also has the responsibility to assess the performance of the CRO and review the CRO's assessment of the Division's staff in fulfilling their responsibilities and recommend compensation and personnel actions to the Board. The ROC will also review, amend, approve or reject the CRO's recommendations respecting the promulgation, filing, or issuance of new rules, rule amendments, rule interpretations, and regulatory circulars, including the approval (or ratification) of all regulatory circulars issued by the NSX within thirty five days of the issuance of such regulatory circulars. On at least an annual basis, the ROC will review the structural protections to separate the Exchange's regulatory function from the commercial interest of the Exchange by reviewing the supervisory responsibilities of the Chief Executive Officer and the CRO. Further, the ROC will take all steps necessary to provide reasonable assurance that NSX is and remains in compliance with the Order[7] and will take any other action necessary to fulfill its oversight and advisory responsibilities.

As also detailed in the ROC Charter, meetings of the ROC shall be called by the Chairman of the ROC or at the request of a majority of the members of the ROC or the CRO. On at least an annual basis, the ROC shall report to the NSX Board on the state of the Exchange's regulatory program. The ROC will also create and maintain complete minutes of all of its meetings, and shall also create and maintain records reflecting the ROC's recommendations or proposals made to the NSX Board, and the NSX Board's decision as to each such recommendation or proposal. As also provided in the ROC Charter, in the event that the ROC's recommended operating budget for NSX's regulatory functions either: (1) Is less than the previous year's budget by a material amount, (2) is rejected by the NSX Board, (3) is reduced by the NSX Board by a material amount, or (4) is altered by the NSX Board in a manner that, in the judgment of the ROC, materially impairs the ability of NSX to meet its regulatory obligations, then NSX shall, within fifteen (15) business days of such NSX Board action, notify the Director of the Commission's Division of Market Regulation in writing, providing copies of all minutes and other records reflecting the ROC's budget proposal and the NSX Board's decision regarding such proposal.

[6] Section F.1. of the Order provides that NSX will undertake to create a ROC and further that:

"a. Within ninety (90) days of the issuance of the Order, NSX shall file proposed rule changes with the [Securities and Exchange] Commission in accordance with Section 19(b) of the Exchange Act and Rule 19b–4 to create a ROC to oversee all of NSX's regulatory functions and responsibilities and to advise regularly the * * * NSX Board * * * about NSX's regulatory matters. The ROC members shall not be, nor have been in the preceding three years, employees of NSX or any NSX member firm. The NSX Board shall appoint the members of the ROC. The ROC shall elect a Chairperson from among its members.

b. The responsibilities of the ROC shall include, but not be limited to: (i) oversight of NSX's regulatory functions to enforce compliance with the federal securities laws and NSX rules, including monitoring the design, implementation, and effectiveness of NSX's regulatory programs; (ii) recommending to the NSX Board an adequate operating budget for NSX's regulatory functions; (iii) approving the promulgation, filing, or issuance of new rules, rule amendments, rule interpretations, and regulatory circulars; (iv) taking any other action necessary to fulfill its oversight and advisory responsibilities; and (v) adopting policies and procedures to ensure the independence of the Chief Regulatory Officer described in Section F.2.a [of the Order].

c. The ROC shall be authorized to retain, at NSX's expense, outside counsel and consultants as it deems appropriate to carry out its responsibilities.

d. The ROC shall create and maintain complete minutes of all of its meetings, and shall also create and maintain records reflecting the ROC's recommendations or proposals made to the NSX Board, and the NSX Board's decision as to each such recommendation or proposal.

e. In the event the ROC's recommended operating budget for NSX's regulatory functions, as described in Section F.1.b. above, either: (i) is less than the previous year's budget by a material amount, (ii) is rejected by the NSX Board; (iii) is reduced by the NSX Board by a material amount; or (iv) is altered by the NSX Board in a manner that, in the judgment of the ROC, materially impairs the ability of NSX to meet its regulatory obligations, then NSX shall, within fifteen (15) business days of such NSX Board action, notify the Director of the Commission's Division of Market Regulation ("Market Regulation") in writing, providing copies of all such minutes and other records reflecting the ROC's budget proposal and the NSX Board's decision regarding such proposal.

f. Subject to Commission approval of NSX's proposed rule changes, NSX shall fully implement this undertaking within one-hundred-eighty (180) days of the issuance of this Order."

See Order, *supra* note 4.

[7] This includes, but is not limited to, the review, assessment and approval of (i) the CRO's certification of certain matters to the Commission, (ii) the CRO's cooperation and interaction with the Regulatory Consultants and the Regulatory Auditors, (iii) the Regulatory Division's implementation of the Regulatory Consultant's recommendations, (iv) the Regulatory Division's answers to any deficiencies noted in the Regulatory Auditors' reports, and (v) the Regulatory Division's adoption of certain procedures and programs outlined in the Order.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act")[8] in general, and furthers the objectives of Section 6(b)(5)[9] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The proposed rule change, as amended, also furthers the objectives of Section 6(b)(1),[10] in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) by order approve such proposed rule change, as amended; or

(b) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2005–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NSX–2005–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2005–07 and should be submitted on or before November 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–5644 Filed 10–13–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52573; File No. SR–NSX–2005–07]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing of Proposed Rule Change, and Amendment Nos. 1, 2, and 3, Thereto, Relating to the Creation of a Regulatory Oversight Committee

October 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2005, the National Stock Exchange℠ ("NSX"℠ or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NSX. On August 17, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. On August 18, 2005, the Exchange filed Amendment No. 2 to the proposed rule change. On October 6, 2005, the Exchange filed Amendment No. 3 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the text of Article VI, Section 1.1 of the Exchange's By-Laws to allow it to create, and specifically identify, a Regulatory Oversight Committee ("ROC") in accordance with the agreed upon undertakings contained in Section F.1. of the Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Sections 19(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Sanctions ("Order") entered May 19, 2005.[4] The text of the proposed rule change, including the proposed charter for the ROC, is below.[5] Proposed new language is in *italics*.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 3 replaced and superseded the original filing, as amended by Amendments Nos. 1 and 2, in its entirety.

[4] *See In the Matter of National Stock Exchange and David Colker*, Securities Exchange Act Release No. 51715 (May 19, 2005).

[5] After consultation with staff, the Exchange is filing the Charter for the Regulatory Oversight Committee (the "ROC Charter") as part of this Rule Change. Accordingly, the Exchange represents that any changes (amendments or deletions) to the ROC

Continued

Code of Regulations (By-Laws) of National Stock Exchange Article VI

Committees

Section 1. Establishment of Committees

1.1. Committees

There shall be a *Regulatory Oversight Committee*, a Membership Committee, a Business Conduct Committee, a Securities Committee, an Appeals Committee, a Nominating Committee, and such other committees as may be established from time to time by the Board. Committees shall have such authority as is vested in them by the By-Laws or Rules or as is delegated to them by the Board. All Committees are subject to the control and supervision of the Board.

* * * * *

NSX REGULATORY OVERSIGHT COMMITTEE CHARTER

The Regulatory Oversight Committee (the "ROC") shall be responsible to oversee all of the National Stock Exchange's ("NSX" or the "Exchange") regulatory functions and responsibilities and to advise regularly the NSX's Board of Directors about NSX's regulatory matters.

A. The responsibilities of the ROC shall be to: (i) oversee the NSX's regulatory functions to enforce compliance with the federal securities laws and NSX rules, including monitoring the design, implementation, and effectiveness of NSX's regulatory programs; (ii) recommend the NSX Board an adequate operating budget for NSX's regulatory functions; (iii) approve the promulgation, filing, or issuance of new rules, rule amendments, rule interpretations, and regulatory circulars; (iv) take any other action necessary to fulfill its oversight and advisory responsibilities; and (v) adopt policies and procedures to ensure the independence of the Chief Regulatory Officer (the "CRO"). For the purpose of strengthening the ROC oversight procedures, the CRO shall certify compliance with the required items of the SEC Order to the ROC on a form and frequency basis set by the ROC.

The CRO shall have the authority to require such additional compliance certification from the staff as he deems appropriate and in such forms as he may prescribe.

B. The ROC shall be authorized to retain, at NSX's expense, outside counsel and consultants as it deems appropriate to carry out its responsibilities.

C. Meetings of the ROC shall be called by the Chairman of the ROC or at the request of a majority of the members of the ROC or the CRO. On at least an annual basis, the ROC shall report to the NSX Board on the state of the Exchange's regulatory program.

D. The ROC shall create and maintain complete minutes of all of its meetings, and shall also create and maintain records reflecting the ROC's recommendations or proposals made to NSX Board, and NSX Board's decision as to each such recommendation proposal.

E. In the event that the ROC's recommended operating budget for NSX's regulatory functions either: (1) Is less than the previous year's budget by a material amount, (2) is rejected by the NSX Board, (3) is reduced by the NSX Board by a material amount, or (4) is altered by the NSX Board in a manner that, in the judgment of the ROC, materially impairs the ability of NSX to meet its regulatory obligations, then NSX shall, within fifteen (15) business days of such NSX Board action, notify the Director of the Commission's Division of Market Regulation in writing, providing copies of all minutes and other records reflecting the ROC's budget proposal and the NSX Board's decision regarding such proposal.

Composition

The Committee members shall be comprised of no less than three members, who have been appointed by the Chairman with the approval of the Board in a composition consistent with federal securities laws and the Exchange By-Laws and Rules. At a minimum, the ROC members shall not be, nor have been during the preceding three years, employees of NSX or any NSX member firm. The ROC shall elect a Chairperson from among its members.

* * * * *

Charter will be filed for approval as part of a filing pursuant to Rule 19b–4 (17 CFR 240.19b–4).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposal and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In accordance with the agreed upon undertakings provided in Section F.1. of the Order, the NSX is proposing to create a ROC through the submission of this rule change. In that regard, the NSX is seeking approval of an amendment to the Exchange By-Laws to specifically identify the ROC as an Exchange committee. The composition, scope of responsibilities, and functions of the ROC will be described in the ROC Charter, which would include provisions that mirror the terms of the undertaking [6] along with certifications

[6] Section F.1. of the Order provides that NSX will undertake to create a ROC and further that:

"a. Within ninety (90) days of the issuance of the Order, NSX shall file proposed rule changes with the [Securities and Exchange] Commission in accordance with Section 19(b) of the Exchange Act and Rule 19b–4 to create a ROC to oversee all of NSX's regulatory functions and responsibilities and to advise regularly the * * * NSX Board * * * about NSX's regulatory matters. The ROC members shall not be, nor have been in the preceding three years, employees of NSX or any NSX member firm. The NSX Board shall appoint the members of the ROC. The ROC shall elect a Chairperson from among its members.

b. The responsibilities of the ROC shall include, but not be limited to: (i) oversight of NSX's regulatory functions to enforce compliance with the federal securities laws and NSX rules, including monitoring the design, implementation, and effectiveness of NSX's regulatory programs; (ii) recommending to the NSX Board an adequate operating budget for NSX's regulatory functions; (iii) approving the promulgation, filing, or issuance of new rules, rule amendments, rule interpretations, and regulatory circulars; (iv) taking any other action necessary to fulfill its oversight and advisory responsibilities; and (v) adopting policies and procedures to ensure the independence of the Chief Regulatory Officer described in Section F.2.a [of the Order].

c. The ROC shall be authorized to retain, at NSX's expense, outside counsel and consultants as it deems appropriate to carry out its responsibilities.

d. The ROC shall create and maintain complete minutes of all of its meetings, and shall also create and maintain records reflecting the ROC's recommendations or proposals made to the NSX Board, and the NSX Board's decision as to each such recommendation or proposal.

e. In the event the ROC's recommended operating budget for NSX's regulatory functions, as described in Section F.1.b. above, either: (i) is less than the previous year's budget by a material amount, (ii) is rejected by the NSX Board; (iii) is reduced by the NSX Board by a material amount; or (iv) is altered by the NSX Board in a manner that, in the judgment of the ROC, materially impairs the ability of NSX to meet its regulatory obligations, then NSX shall, within fifteen (15) business days of such NSX Board action, notify the Director of the Commission's Division of Market Regulation ("Market Regulation") in writing, providing copies of all such minutes and other records reflecting the ROC's budget proposal and the NSX Board's decision regarding such proposal.

f. Subject to Commission approval of NSX's proposed rule changes, NSX shall fully implement this undertaking within one-hundred-eighty (180) days of the issuance of this Order."

procedures similar to those prescribed by Sarbanes-Oxley and which are also consistent with the certification procedures contained in the Order.

The ROC members shall be comprised of no less than three members, who have been appointed by the NSX Chairman with the approval of the Board in a composition consistent with federal securities laws and the Exchange By-Laws and Rules. At a minimum, the ROC members shall not be, nor have been during the preceding three years, employees of the NSX or any NSX member firm. The ROC shall elect a Chairperson from among its members.

With respect to scope of responsibilities, the ROC is a committee of the NSX Board that is responsible for oversight of all NSX regulatory functions. The ROC is also responsible for keeping the NSX Board informed, on a regular basis, concerning the Exchange's regulatory functions, for providing advice to the Board concerning those functions, and for making recommendations to the Board for NSX action with respect to regulatory matters. The scope of responsibilities, as detailed in the Commission's Order, is contained in the ROC Charter.

As detailed in the ROC Charter, the ROC's functions include responsibility for the oversight of all of NSX's regulatory functions in order to promote and enforce compliance with the federal securities laws and the NSX rules, including reviewing with the Exchange's Chief Regulatory Officer (the "CRO") and other appropriate regulatory personnel various aspects of the design, implementation, and effectiveness of NSX's regulatory programs. The ROC will also review, revise and/or approve the CRO's recommendation for a regulatory budget to formulate the ROC's recommendation of an adequate operating budget and staffing level for NSX's regulatory function to the Board. In addition, the ROC will review, evaluate, and, if appropriate, recommend to the Board the implementation of any and all actions recommended by the CRO and the Regulatory Services Division (the "Division") to fulfill the Division's and the ROC's oversight and advisory responsibilities. The ROC also has the responsibility to assess the performance of the CRO and review the CRO's assessment of the Division's staff in fulfilling their responsibilities and recommend compensation and personnel actions to the Board. The ROC will also review, amend, approve or reject the CRO's recommendations respecting the promulgation, filing, or issuance of new rules, rule amendments, rule interpretations, and regulatory circulars, including the approval (or ratification) of all regulatory circulars issued by the NSX within thirty five days of the issuance of such regulatory circulars. On at least an annual basis, the ROC will review the structural protections to separate the Exchange's regulatory function from the commercial interest of the Exchange by reviewing the supervisory responsibilities of the Chief Executive Officer and the CRO. Further, the ROC will take all steps necessary to provide reasonable assurance that NSX is and remains in compliance with the Order[7] and will take any other action necessary to fulfill its oversight and advisory responsibilities.

As also detailed in the ROC Charter, meetings of the ROC shall be called by the Chairman of the ROC or at the request of a majority of the members of the ROC or the CRO. On at least an annual basis, the ROC shall report to the NSX Board on the state of the Exchange's regulatory program. The ROC will also create and maintain complete minutes of all of its meetings, and shall also create and maintain records reflecting the ROC's recommendations or proposals made to the NSX Board, and the NSX Board's decision as to each such recommendation or proposal. As also provided in the ROC Charter, in the event that the ROC's recommended operating budget for NSX's regulatory functions either: (1) Is less than the previous year's budget by a material amount, (2) is rejected by the NSX Board, (3) is reduced by the NSX Board by a material amount, or (4) is altered by the NSX Board in a manner that, in the judgment of the ROC, materially impairs the ability of NSX to meet its regulatory obligations, then NSX shall, within fifteen (15) business days of such NSX Board action, notify the Director of the Commission's Division of Market Regulation in writing, providing copies of all minutes and other records reflecting the ROC's budget proposal and the NSX Board's decision regarding such proposal.

See Order, *supra* note 4.

[7] This includes, but is not limited to, the review, assessment and approval of (i) the CRO's certification of certain matters to the Commission, (ii) the CRO's cooperation and interaction with the Regulatory Consultants and the Regulatory Auditors, (iii) the Regulatory Division's implementation of the Regulatory Consultant's recommendations, (iv) the Regulatory Division's answers to any deficiencies noted in the Regulatory Auditors' reports, and (v) the Regulatory Division's adoption of certain procedures and programs outlined in the Order.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act")[8] in general, and furthers the objectives of Section 6(b)(5)[9] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The proposed rule change, as amended, also furthers the objectives of Section 6(b)(1),[10] in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) by order approve such proposed rule change, as amended; or

(b) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(1).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an *e-mail to rule-comments@sec.gov*. Please include File Number SR–NSX–2005–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NSX–2005–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2005–07 and should be submitted on or before November 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–5643 Filed 10–13–05; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52569; File No. SR–NYSE–2005–61]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto Relating to an Interpretation of Exchange Rule 452

October 6, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 2005, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission").the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Exchange filed Amendment Nos. 1[3] and 2[4] to the proposed rule change on September 20, 2005 and September 28, 2005, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend an Exchange interpretation of Exchange Rule 452 (Giving Proxies by Member Organizations).[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 452 (which is referenced in Sections 402.06 and 402.08 of the Listed Company Manual) provides that a member organization may give a proxy to vote shares registered in its name, notwithstanding the failure of the beneficial owner to instruct the firm how to vote, provided, among other things, that the proposal being voted on does not involve a matter which "may affect substantially the rights or privileges of such stock." By way of example, Supplementary Material .11 to Rule 452 (which is also referenced in Section 402.08 of the Listed Company Manual) lists 18 actions in respect of which member organizations may not vote uninstructed shares. In addition to those 18 specific actions, the Exchange has interpreted Rule 452 to preclude member organizations from voting without instructions in certain other situations, including any material amendment to the investment advisory contract with an investment company.[6]

For many years, the Exchange interpreted this provision to permit member organizations to vote uninstructed shares on the authorization of new investment company investment advisory contracts, where the change in identity of the investment adviser was the only change being made to the substantive terms of the contract.

The Exchange, following discussions with staff from the Commission's Division of Investment Management, has determined that any proposal to obtain shareholder approval of an investment company's investment advisory contract with a new investment adviser, which approval is required by the Investment Company Act of 1940, as amended ("1940 Act"),[7] and the rules thereunder, will be deemed to be a "matter which may affect substantially the rights or privileges of such stock" for purposes of Exchange Rule 452 so that a member organization may not give a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares. As a result, for example, a member organization may not give a proxy to vote shares registered in its

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 was intended to replace and supersede the filing in its entirety. However, the Exchange withdrew Amendment No. 1 on September 28, 2005 since the Exchange inadvertently submitted Amendment No. 1 incorrectly under to Rule 19b–4(f)(6), rather than Rule 19b–4(f)(1).

[4] In Amendment No. 2, the Exchange made non-substantive clarifying changes to reference Sections 402.06 and 402.08 of the Exchange's Listed Company Manual, in the Purpose section of its filing.

[5] The Commission notes that the proposed rule change, as amended, does not amend the text of Exchange Rule 452 or its Supplementary Material.

[6] *See* Securities Exchange Act Release No. 30697 (May 13, 1992), 57 FR 21434 (May 20, 1992) (SR–NYSE–92–05).

[7] 15 U.S.C. 80a *et seq.*

name, absent instruction from the beneficial holder of the shares, on any proposal to obtain shareholder approval required by the 1940 Act of an investment advisory contract between an investment company and a new investment adviser due to an assignment of the investment company's investment advisory contract, including an assignment caused by a change in control of the investment adviser that is party to the assigned contract.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act [8] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and paragraph (f)(1) of Rule 19b–4 thereunder [10] as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Exchange rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(1).

[11] The effective date of the original proposed rule change is September 2, 2005 and the effective date of Amendment No. 2 is September 28, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 28, 2005, the date on which the Exchange submitted Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. All submissions should refer to File Number SR–NYSE–2005–61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–61 and should be submitted on or before November 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–5646 Filed 10–13–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52579; File No. SR–NYSE–2004–73]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Amend NYSE Rule 440A Relating to Telephone Solicitation

October 7, 2005.

On December 30, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Exchange Act"),[2] and Rule 19b–4 thereunder,[3] a proposed amendment to NYSE Rule 440A relating to telephone solicitation. On July 1, 2005, the NYSE filed Amendment No. 1 to the proposed rule change.[4] On August 11, 2005, the NYSE filed Amendment No. 2 to the proposed rule change.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 25, 2005.[6] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

NYSE Rule 440A currently provides that no member, allied member or employee of a member or member organization shall make an outbound telephone call to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location without the prior consent of the person; or make an outbound telephone call to any person for the purpose of soliciting the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the NYSE proposed to partially amend the text of proposed amended Rule 440A and made conforming and technical changes to the original filing.

[5] In Amendment No. 2, the NYSE proposed additional changes to the text of proposed amended Rule 440A and made additional changes to the original filing.

[6] *See* Securities Exchange Act Release No. 52308 (August 19, 2005), 70 FR 49961 (August 25, 2005).

purchase of securities or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information: (1) The identity of the caller and the member or member organization; (2) the telephone number or address at which the caller may be contacted; and (3) that the purpose of the call is to solicit the purchase of securities or related services.

The proposed amendment to NYSE Rule 440A would incorporate regulations issued by the Federal Communications Commission ("FCC") and the Federal Trade Commission relating to the implementation of the national do-not-call registry and the amendments to the Telephone Consumer Protection Act of 1991 ("TCPA").[7] The amendment would delete current Rule 440A and replace it with new language that incorporates the requirements of the FCC regulation, which is applicable to broker-dealers, but retain those sections of current Rule 440A that remain relevant. The proposed amended rule would generally prohibit NYSE members, allied members, and employees of members and member organizations from making telemarketing calls to people who have registered on the national do-not-call registry, while retaining time-of-day and firm-specific do-not-call restrictions similar to those contained in the current rule.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[9] of the Exchange Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change, as amended, is designed to accomplish these ends by requiring NYSE members, allied members, and employees of members and member organizations to observe time-of-day restrictions on telephone solicitations, maintain firm-specific do-not-call lists, and refrain from initiating telephone solicitations to investors and other members of the public who have registered their telephone numbers on the national do-not-call registry. The Commission also believes that the proposed rule change, as amended, establishes adequate procedures to prevent NYSE members, allied members, and employees of members and member organizations from making telephone solicitations to do-not-call registrants, which should have the effect of protecting investors by enabling persons who do not want to receive telephone solicitations from members or member organizations to receive the protections of the national do-not-call registry, while providing appropriate exceptions to the rule's restrictions, which should promote just and equitable principles of trade.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2004–73), as amended, be and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5652 Filed 10–13–05; 8:45 am]

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[7] Rules and Regulations Implementing the TCPA, FCC 03–153, adopted June 26, 2003, 68 FR 44144 (July 25, 2003). The FCC rules address such diverse topics as abandoned calls and calls made on behalf of tax exempt non-profit organizations. The NYSE's proposed amendment does not contain these provisions as such matters generally fall outside the purview of the investor protection concerns underlying the proposed rule change. Nevertheless, members and member organizations are subject to the FCC national do-not-call rules and must therefore, comply with those provisions or risk action by the FCC.

[8] In approving this proposed rule change, the Commission has considered whether the proposed rule change will promote efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52568; File No. SR–Phlx–2005–58]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Its October 2005 Equity Options Payment for Order Flow Program

October 6, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 3, 2005, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] The Phlx has designated this proposal as one changing a fee imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its equity options payment for order flow program in a number of ways, as described in detail below.

A. Equity Option Payment for Order Flow Program Prior to October 1, 2005

Pursuant to the Exchange's payment for order flow program in effect for transactions settling on or after July 1, 2005,[6] only orders that are delivered electronically, over AUTOM, are assessed a payment for order flow fee to a Registered Options Trader ("ROT") or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange revised the proposed text to correct typographical errors contained in the proposed Schedule of Fees and to reflect that options on the Nasdaq-100 Index Tracking Stock℠ are now traded under the symbol "QQQQ."

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] The program that took effect on July 1, 2005 is a pilot program that is scheduled to expire on May 27, 2006, the same date the one-year pilot program in connection with Directed Orders is due to expire. *See* Securities Exchange Act Release Nos. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR–Phlx–2004–91) and 52114 (July 22, 2005), 70 FR 44138 (August 1, 2005) (SR–Phlx–2004–44).

a Directed ROT,[7] but not a specialist,[8] if the specialist elects to opt into the payment for order flow program for that option. For those orders that are not delivered electronically, *i.e.* represented by a floor broker, a payment for order flow fee is not assessed on those equity option transactions.[9]

If the specialist unit opts into the program, the Exchange charges a payment for order flow fee to ROTs of $0.60 on all equity options traded against a customer order on the Exchange that are delivered electronically over AUTOM, other than options on the Nasdaq-100 Index Tracking StockSM traded under the symbol QQQQ ("QQQQ"),[10] which are assessed a payment for order flow fee of $0.75. FXI Options are not assessed a payment for order flow fee.

1. Directed ROTs and ROTs

For Directed Orders received over AUTOM, Directed ROTs may elect to be assessed or not to be assessed a payment for order flow fee for orders directed to them when the specialist has elected to participate in the payment for order flow program for that option. Directed ROTs may not request reimbursement for payment for order flow paid to Order Flow Providers.[11]

Directed ROTs must notify the Exchange of the election to pay or not to pay the payment for order flow fee for Directed Orders in writing no later than five business days prior to the start of the month for which the payment for order flow fee is to be assessed.[12]

However, the payment for order flow fee is assessed on any ROT (but not the Directed ROT for that transaction when the Directed ROT has opted out of the payment for order flow program) if the ROT participates in the allocation of any remaining contracts after the Directed ROT receives its trade allocation. The Exchange states that the payment for order flow fee applies, in effect, to equity option transactions between a ROT (and Directed ROT who has elected to be assessed a payment for order flow fee) and a customer.[13]

2. Specialists

Specialists are not assessed a payment for order fee.[14] Consistent with current practice, the Exchange must be notified of the election to participate or not to participate in the payment for order flow program in writing no later than five business days prior to the start of the month for which reimbursement for monies expended on payment for order flow will be requested.[15] The Exchange states that the result of electing not to participate in the program is a waiver of the right to any reimbursement of payment for order flow funds for such month(s). If a specialist opts in its entirety into the program and does not request any payment for order flow reimbursement more than two times in a six-month period, it will be precluded from entering in its entirety in the payment for order flow program for the next three months.

Specialists may also elect to participate or not to participate in the payment for order flow program on an option-by-option basis if they notify the Exchange in writing no later than three business days prior to entering into or opting out of the payment for order flow program. Specialists may only opt into or out of the Exchange's payment for order flow program one time in any given month.

Thus, if at any time during a month, a specialist opts into the payment for order flow program for a particular option, a payment for order flow fee is assessed for that portion of the month. For example, a payment for order flow fee is assessed, even beginning mid-month, if an option is allocated, or reallocated from a non-participating specialist unit, to a specialist unit that participates in the Exchange's payment for order flow program.

Payment for order flow charges apply to ROTs (or Directed ROTs that have elected to be assessed the payment for

[7] Directed ROTs are either Streaming Quote Traders ("SQTs") or Remote Streaming Quote Traders ("RSQTs") that receive Directed Orders. An SQT is an Exchange ROT who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. *See* Exchange Rules 1014(b)(ii) and 1080l. An RSQT is an Exchange ROT that is a member or member organization of the Exchange with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may only trade in a market making capacity in classes of options in which he is assigned. *See* Exchange Rule 1014(b)(ii)(B). *See* Securities Exchange Act Release Nos. 51126 (February 2, 2005), 70 FR 6915 (February 9, 2005) (SR–Phlx–2004–90) and 51428 (March 24, 2005), 70 FR 16325 (March 30, 2005) (SR–Phlx–2005–12). The term "Directed Order" means any customer order to buy or sell, which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider (defined below). The provisions of Exchange Rule 1080(l) are in effect for a one-year pilot period to expire on May 27, 2006. *See* Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR–Phlx–2004–91).

[8] The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

[9] Electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.

[10] The Nasdaq-100(r), Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the "Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

The Exchange proposes to modify the symbol "QQQ" in its Fee Schedule to "QQQQ" to reflect that the options on the Nasdaq-100 Index Tracking Stock are currently traded under the symbol "QQQQ." *See* Amendment No. 1.

[11] The term "Order Flow Provider" means any member or member organization that submits, as agent, customer orders to the Exchange. *See* Exchange Rule 1080(l).

[12] Directed ROTs are required to notify the Exchange in writing to either elect to pay the payment for order flow fee or not to pay the fee when the specialist has elected to opt into the payment for order flow program for that option. The Directed ROT does not need to notify the Exchange in writing to either elect to pay the payment for order flow fee or not to pay the fee if the specialist for that option does not participate in the Exchange's payment for order flow program. Once an election to pay the payment for order flow fee or not to pay the payment for order flow fee in a particular month has been made, no notice to the Exchange is required in a subsequent month unless there is a change in participation status.

[13] Thus, the payment for order flow fee is not assessed on transactions between: (1) a specialist and a ROT; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. The ROT payment for order flow fee does not apply to index options or foreign currency options. For purposes of the payment for order flow program, a firm is defined as a proprietary account of a member firm, and not the account of an individual member and a broker-dealer orders are orders entered from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of an ROT entered from off-the-floor.

[14] For purposes of assessing payment for order flow fees, the Exchange does not differentiate between specialists and specialists who receive Directed Orders.

[15] Specialists must notify the Exchange in writing to either elect to participate or not to participate in the program. Once an election to participate or not to participate in the Exchange's payment for order flow program in a particular month has been made, no notice to the Exchange is required in a subsequent month, as described above, unless there is a change in participation status. For example, if a specialist elected to participate in the program and provided the Exchange with the appropriate notice, that specialist would not be required to notify the Exchange in the subsequent month(s) if it intends to continue to participate in the program. However, if it elects not to participate (i.e., change from its current status), it would need to notify the Exchange in accordance with the requirements stated above.

order flow fee) as long as the specialist unit for that option elects to participate in the Exchange's payment for order flow program.

The payment for order flow fee is billed and collected on a monthly basis. Because the specialists are not charged the payment for order flow fee, they may not request reimbursement for order flow funds in connection with any transactions to which they were a party.

The Exchange states that specialists may request payment for order flow reimbursements on an option-by-option basis. The collected funds are to be used by each specialist as a reimbursement for monies expended to attract options orders to the Exchange by making payments to Order Flow Providers who provide order flow to the Exchange. Specialists receive their respective funds only after submitting an Exchange certification form identifying the amount of the requested funds.[16]

The Exchange states that the amount a specialist may receive in reimbursement is limited. For a specialist who elects to participate in the Exchange's payment for order flow program for electronically delivered orders, the amount of reimbursement is limited to the percentage of ROT and Directed ROT monthly volume to total participating specialist, Directed ROT and ROT monthly volume in the equity option payment for order flow program.

3. Specialist Calculation

Funds collected from the payment for order flow program are available to the specialist participating in the payment for order flow program. The amount of funds that are available are determined by a specific specialist calculation.[17]

The Exchange states that any excess funds (funds remaining after reimbursement requests are processed) for a particular month that are not requested by the participating specialist are returned, by option, to the ROTs and Directed ROTs (who have opted to pay the payment for order flow fee) who have been charged payment for order flow fees. The excess funds are reflected as a credit on the monthly invoices and rebated on a pro rata basis by option to the ROTs and Directed ROTs who were billed payment for order flow charges for that same month.

Participating specialists may not receive more than the payment for order flow amount billed and collected in a given month.

In addition, a 500-contract cap per individual cleared side of a transaction is imposed. The Exchange also implements a quality of execution program. Further, the Exchange may audit a specialist's payments to Order Flow Providers to verify the use and accuracy of the payment for order flow funds remitted to the specialists based on their certification form.[18]

B. This Proposal: Equity Options Payment for Order Flow Program To Be in Effect for Transactions Settling on or After October 1, 2005

The proposal, as discussed below, would be in effect for trades settling on or after October 1, 2005 and would remain in effect as a pilot program that is scheduled to expire on May 27, 2006, the same date that the one-year pilot program relating to Directed Orders is due to expire.[19]

The payment for order flow rate would remain unchanged under the program to be in effect for transactions settling on or after October 1, 2005 ("October program"). Specifically, the following rates would continue to apply: (1) Equity options other than QQQQ and FXI Options will be assessed $0.60 per contract; (2) options on QQQQ will be assessed $0.75 per contract; and (3) no payment for order flow fee will be assessed on FXI Options. Consistent with the current program, trades resulting from either Directed or non-Directed Orders that are delivered electronically over AUTOM and executed on the Exchange would be assessed a payment for order flow fee, while non-electronically-delivered orders (*i.e.*, represented by a floor broker) would not be assessed a fee.[20]

However, the following aspects of the October program would be new or different: (1) Assessing the payment for order flow fee; (2) allowing Directed ROTs to elect to participate or not to participate in the payment for order flow program; (3) establishing separate pools of funds for each Directed ROT and each specialist unit that participates in the Exchange's payment for order flow program, with the funds no longer being pooled on an option-by-option basis; (4) eliminating the reimbursement process whereby specialists requested funds to reimburse them for payments made to Order Flow Providers; (5) allowing the Exchange to make payments directly to Order Flow Providers at the direction of the Directed ROT or specialist unit; (6) carrying forward each month excess funds (funds not requested by specialist units or Directed ROTs to be paid to Order Flow Providers), up to a certain amount or, at the direction of the specialist unit or Directed ROT rebating the excess funds on a pro-rata basis; and (7) establishing a payment for order flow advisory group, which would conduct periodic reviews to assist in determining the effectiveness of the Exchange's payment for order flow program.

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[16] The Exchange states that Specialists are given instructions as to when the certification forms are required to be submitted. While all determinations concerning the amount that will be paid for orders and which Order Flow Providers shall receive these payments are made by the specialists, the specialists will provide to the Exchange on an Exchange form certain information as required by the Exchange, which may include what firms they paid for order flow, the amount of the payment and the price paid per contract.

[17] For example, if a specialist unit in the payment for order flow program has a payment for order flow arrangement with various Order Flow Providers to pay the Order Flow Providers $0.50 per contract for order flow routed to the Exchange, including for order flow sent to Directed ROTs, and those Order Flow Providers send 90,000 customer contracts to the Exchange in one month for one option, then the specialist would be required, pursuant to its agreement with the Order Flow Providers, to pay the Order Flow Providers $45,000 for that month. Assuming that the 90,000 represents 30,000 specialist contracts, 30,000 total ROT and Directed ROT contracts (comprised of 10,000 ROT contracts, 10,000 Directed ROT "A" contracts, 7,000 Directed ROT "B" contracts and 3,000 Directed ROT "C" contracts), and 30,000 contracts from firms, broker-dealers and other customers, the specialist may request reimbursement of up to 50% (30,000 ROT and Directed ROT contracts/60,000, which is comprised of 30,000 ROT and Directed ROT contracts + 30,000 specialist contracts) of the amount paid ($45,000 × 50% = $22,500). Because the ROTs and Directed ROTs will have paid a total of $18,000 (30,000 contracts × $.60 per contract) into the payment for order flow fund for that month, the specialist may collect up to $18,000 of its $22,500 reimbursement request.

Assuming, however, that Directed ROT "B" elects not to be assessed a payment for order flow fee and has notified the Exchange pursuant to the requirements set forth above, then the specialist is obligated to pay for 83,000 contracts (or $41,500 (83,000 × $.50 per contract)). The ROTs and Directed ROTs "A" and "C" will have paid $13,800 (23,000 contracts × $.60 per contract) into the payment for order flow fund for that option for that month. Thus, the amount the specialist may collect is up to $13,800 of its $20,750 ($41,500 × 50%) reimbursement request. (For purposes of this example, the Directed ROTs have elected to be assessed the payment for order flow fee by notifying the Exchange in writing, consistent with the notification requirements previously discussed).

If all Directed ROTs have notified the Exchange that they elect not to be assessed a payment for order flow fee in the above-referenced example, then the specialist is obligated to pay for 70,000 contracts (or $35,000 (70,000 × $.50 per contract)). The ROTs will have paid $6,000 (10,000 contracts × $.60 per contract) into the payment for order flow fund for that option for that month. Thus, the amount the specialist may collect is up to $6,000 of its $17,500 ($35,000 × 50%) reimbursement request.

[18] *See* Exchange Rule 760.

[19] *See* Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR–Phlx–2004–91).

[20] For purposes of this proposal, electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.

Assessment of the Payment for Order Flow Fee and Participation in the Payment for Order Flow Program

Specialist and Directed ROTs who participate in the Exchange's payment for order flow program would be assessed a payment for order flow fee, in addition to ROTs. Therefore, the payment for order flow fee would be assessed, in effect, on equity option transactions between a customer and an ROT, a customer and a Directed ROT, or a customer and a specialist. The payment for order flow fees would be assessed when the specialist, or Directed ROT to whom the order is directed, participates in the Exchange's payment for order flow program.

Specialist units would continue to be permitted to opt into or out of the Exchange's payment for order flow program. The Exchange also proposes to allow Directed ROTs to be permitted to opt into or out of the Exchange's payment for order flow program for orders directed to them.

For both specialist units and Directed ROTs, the Exchange must be notified of the election to participate or not to participate in the payment for order flow program in writing no later than five business days prior to the date on which the payment for order flow fee will be assessed.[21] Specialist units and Directed ROTs may only opt into or out of the Exchange's payment for order flow program one time in any given month. The Exchange represents that the result of electing not to participate in the program would be a waiver of the right to direct the Exchange to make payments to Order Flow Providers. If a specialist unit or Directed ROT opts into the program and does not direct the Exchange to make any payment for order flow payments to Order Flow Providers more than two times in a six-month period, it would be precluded from entering into the payment for order flow program for the next three months.

If at any time during a month, a specialist unit or Directed ROT opts into the payment for order flow program, a payment for order flow fee would be assessed for that portion of the month. For example, a payment for order flow fee would be assessed, even beginning mid-month, if an option is allocated, or reallocated from a non-participating specialist unit, to a specialist unit that participates in the Exchange's payment for order flow program or if a ROT is designated as a Directed ROT mid-month.

The amount a specialist unit or Directed ROT may request that the Exchange pay to Order Flow Providers would be limited to the amount billed and collected for that month,[22] plus any excess funds that were carried over from previous months (funds collected but not requested by a specialist unit or Directed ROT). However, specialist units or Directed ROTs, would be able to request that any excess funds be rebated on a pro-rata basis to the applicable members (*i.e.*, the applicable ROT, Directed ROT or specialist)[23] who paid into that pool of funds. If excess funds are rebated, they would be reflected as a credit on the invoices.[24]

The available payment for order flow funds would be disbursed by the Exchange according to the instructions of the specialist units and Directed ROTs.[25] Specialist units and Directed ROTs would be given instructions as to how to submit their payment directions. The Exchange would not be involved in the determination of the terms governing the orders that qualify for payment or the amount of any payment. The Exchange would provide administrative support for the program in such matters as maintaining the funds, keeping track of the number of qualified orders each specialist unit and Directed ROT directs to the Exchange, and making payments to the Order Flow Providers on behalf of, and at the direction of, the specialist units or Directed ROT.

Separate pools of funds would be available to each specialist unit and Directed ROT solely for those trades where the payment for order flow fee was assessed and would be aggregated for use by each specialist unit and each Directed ROT to attract customer orders to the Exchange from Order Flow Providers that accept payment as a factor in making their order routing decisions. For Directed Orders, payment for order flow fees would be assessed on a per contract basis (when the specialist or Directed ROT opts into the program) and would be aggregated into separate pools of funds for use by each specialist unit or Directed ROT. For non-directed electronically-delivered orders, payment for order flow fees would continue to be assessed on a per contract basis and would be allocated for use by the participating specialist.

The Exchange is also proposing to establish a payment for order flow advisory group, which would conduct periodic reviews to assist in determining the effectiveness of the Exchange's payment for order flow program.[26]

The 500-contract cap per individual cleared side of a transaction would continue to be imposed. The Exchange would also continue to implement a quality of execution program.[27]

Below is the text of the proposed rule change, as amended. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

SUMMARY OF EQUITY OPTION CHARGES (p. 3/6)

For any top 120 option listed after February 1, 2004 and for any top 120 option acquired by a new specialist unit ** within the first 60 days of operations, the following thresholds will apply, with a cap of $10,000 for the first 4 full months of trading per month per option provided that the total monthly market share effected on the Phlx in that top 120 Option is equal to or greater than 50% of the volume threshold in effect:

First full month of trading: 0% national market share

[21] Specialist units and Directed ROTs would be required to notify the Exchange in writing to either elect to participate or not to participate in the program. Once an election to participate or not to participate in the Exchange's payment for order flow program in a particular month has been made, no notice to the Exchange would be required in a subsequent month, as described above, unless there is a change in participation status. For example, if a specialist unit elected to participate in the program and provided the Exchange with the appropriate notice, that specialist unit would not be required to notify the Exchange in the subsequent month(s) if it intends to continue to participate in the program. However, if it elects not to participate (a change from its current status), it would need to notify the Exchange in accordance with the requirements stated above. Specialist units and Directed ROTs who currently participate in the Exchange's payment for order flow program in effect beginning July 1, 2005, would not need to notify the Exchange again regarding their participation status, unless there is a change from their current status.

[22] The Exchange intends to have the National Securities Clearing Corporation collect the payment for order flow fees, along with other Exchange fees, on behalf of the Exchange on a monthly basis.

[23] *See* Amendment No. 1, note 3, *supra*.

[24] If a specialist unit or a Directed ROT leaves the Exchange mid-month, any excess funds in that specialist unit or Directed ROT pool would be rebated to the applicable Exchange members on a pro rata basis. This process would occur automatically without any request having to be made by any party. Per Telephone call between Michou H.M. Nguyen, Commission and Cynthia K. Hoekstra, Exchange on October 4, 2005.

[25] A specialist unit or a Directed ROT would certify to the Exchange that payment for order flow funds directed by either of them to be paid to Order Flow Providers reflect payment arrangements entered into by the specialist unit or Directed ROT and the Order Flow Provider.

[26] In connection with determining the effectiveness of the Exchange's payment for order flow program, the advisory group would review whether excess funds should continue to be carried over from previous months (in instances where specialist units and Directed ROTs do not request that excess funds be rebated to the applicable members who paid into the payment for order flow pools).

[27] *See* Exchange Rule 760.

Second full month of trading: 3% national market share
Third full month of trading: 6% national market share
Fourth full month of trading: 9% national market share
Fifth full month of trading (and thereafter): 12% national market share

** A new specialist unit is one that is approved to operate as a specialist unit by the Options Allocation, Evaluation, and Securities Committee on or after February 1, 2004 and is a specialist unit that is not currently affiliated with an existing options specialist unit as reported on the member organization's Form BD, which refers to direct and indirect owners, or as reported in connection with any other financial arrangement, such as is required by Exchange Rule 783.

REAL-TIME RISK MANAGEMENT FEE

$.0025 per contract for firms/members receiving information on a real-time basis.

EQUITY OPTION PAYMENT FOR ORDER FLOW FEES*[(1) (2)]

[Registered Option Trader**+]

*(1) For trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange: Assessed on ROTs, specialists and Directed ROTs on those trades when the specialist unit or Directed ROT elects to participate in the payment for order flow program.****

(2) No payment for order flow fees will be assessed on trades that are not delivered electronically.

QQQQ (NASDAQ–100 Index Tracking Stock℠) $0.75 per contract
Remaining Equity Options, except FXI Options $0.60 per contract

*Assessed on transactions resulting from customer orders, subject to a 500-contract cap, per individual cleared side of transaction. *This proposal will be in effect for trades settling on or after October 1, 2005 and will remain in effect as a pilot program that is scheduled to expire on May 27, 2006.*

***Any excess payment for order flow funds billed but not *utilized by the specialist or Directed ROT* [reimbursed to specialists] will be *carried forward unless the Directed ROT or specialist elects to have those funds rebated to the applicable ROT, Directed ROT or specialist on a pro rata basis, reflected as a credit on the monthly invoices.* [returned to the applicable ROTs and Directed ROTs who have elected to be assessed a payment for order flow fee (reflected as a credit on the monthly invoices) and distributed on a pro rata basis.]

[+Only incurred when the specialist elects to participate in the payment for order flow program.]

[(1) For orders delivered electronically: Assessed on ROTs when the specialist unit opts into the program. ROTs who receive Directed Orders may elect to be assessed the payment for order flow fee on customer orders directed to and executed by them.

[(2) No payment for order flow fees will be assessed on orders that are not delivered electronically]

See Appendix A for additional fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange represents that the purpose of the proposal, as amended, is to adopt a more competitive and administratively efficient payment for order flow program. This proposal would give both specialist units and Directed ROTs the ability to compete for order flow by allowing them to elect to participate or not to participate in the Exchange's payment for order flow program. The proposal would also establish separate pools of payment for order flow funds for each specialist and each Directed ROT. The proposal would permit the specialist units and Directed ROTs to instruct the Exchange as to how to distribute the available payment for order flow funds directly to order flow providers.

According to the Phlx, the Exchange's trading environment has changed. Now, ROTs must submit their orders electronically through streaming quote devices. Therefore, particular trading crowds are not relevant in that ROTs may stream from anywhere on the trading floor or off the trading floor.[28] ROTs have unlimited access to stream any and all equity option issues without limitations, with participation spread among various issues and specialists.[29]

The Exchange believes that the "pooling" of payment for order flow fees collected by the Exchange is similar to the practices currently in effect at the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange ("ISE"), Inc and the Pacific Exchange, Inc ("PCX").[30] Payment for order flow funds generated from this proposal originate from electronic orders—generally the same type of orders for which Order Flow Providers expect payment. Only specialists, Directed ROTs and ROTs that stream quotes will be assessed the payment for order flow fee, as floor-brokered orders are not part of the program.

According to the Exchange, it has further added supplementary administrative practices that are necessary to remain competitive with other options exchanges and should help to ease the accounting burden on membership. This is achieved by eliminating the reimbursement process and by having the Exchange act as the program administrator remitting payments directly to Order Flow Providers per the instructions of the specialist unit or Directed ROT in a manner, which the Exchange believes is substantially similar to that of other options exchanges.[31]

Nguyen, Commission, Cynthia K. Hoekstra, Exchange and William N. Briggs, Exchange on October 4, 2005.

[28] A ROT is either a SQT or a RSQTs, as defined in footnote 7, *supra*. A SQT may only stream from the floor. A RSQT may only stream from off the floor. Per Telephone call among Michou H.M.

[29] Exchange Rule 507 places no limit on the number of qualifying ROTs that may become SQTs or RSQTs; any applicant that is qualified as an ROT in good standing and that satisfies the technological readiness and testing requirements shall be approved as an SQT. RSQTs must also demonstrate additional qualifications. *See* Exchange Rule 507, Application for Assignment in Streaming Quote Options.

[30] *See* Securities Exchange Act Release Nos. 52474 (September 20, 2005), 70 FR 56520 (September 27, 2005) (SR–CBOE–2005–72) (all funds generated by CBOE's "marketing fee" are collected by CBOE and recorded according to the Designated Primary Market-Maker ("DPM") station and class where the options subject to the fee are traded); 48568 (September 30, 2003), 68 FR 57720 (October 6, 2003) (SR–ISE–2003–23) (ISE has divided the options it trades into ten groups, with one Primary Market Maker assigned to each group. The ISE maintains a payment for order flow fund for each group, consisting of the fees collected from market makers trading options in that group); and 48175 (July 14, 2003), 68 FR 43245 (July 21, 2003) (SR–PCX–2003–30) (PCX collects and segregates the "marketing fee" proceeds by trading post).

[31] *See* Securities Exchange Act Release Nos. 51650 (May 3, 2005), 70 FR 24663 (May 10, 2005) (SR–CBOE–2005–34) (the "marketing fee" collected by CBOE is disbursed by CBOE according to the instructions of the DPM); and 48175 (July 14, 2003), 68 FR 43245 (July 21, 2003) (SR–PCX–2003–30) (PCX collects and segregates the fee proceeds by trading post and makes the funds available to Lead Market Makers ("LMM"). The LMMs determine the

2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with Section 6(b) of the Act [32] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act [33] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among the Phlx's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [34] and Rule 19b–4(f)(2) [35] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[36]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–58. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–58 and should be submitted on or before November 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–5645 Filed 10–13–05; 8:45 am]

BILLING CODE 8010–01–P

specific terms governing the orders that qualify for payment and the amounts to be paid).

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(4)–(5).

[34] 15 U.S.C. 78s(b)(3)(A)(ii).

[35] 17 CFR 240.19b–4(f)(2).

[36] The effective date of the original proposed rule change is September 29, 2005, the effective date of Amendment No. 1 is October 3, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on October 3, 2005, the date on which the Exchange submitted Amendment No. 1.

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52572; File No. SR–Phlx–2005–57]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to Dissemination of the Underlying Index Value for Trust Shares and Index Fund Shares

October 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 21, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Sections (i) and (l) of Phlx Rule 803, the listing standards for two kinds of exchange traded funds, Trust Shares and Index Fund Shares, to provide that the current value of the underlying index must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the Trust Share or Index Fund Share trades on the Exchange. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

Rule 803

Criteria for Listing—Tier I

* * * * *

(a)–(h) No Change.

(i) Trust Shares

(1)–(10) No Change.

(11) The Exchange may approve a series of Trust Shares for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) No Change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(b) Index Methodology and Calculation.

(i) No Change.

(ii) No Change.

(iii) The current index value will be *widely* disseminated *by one or more major market data vendors at least* every 15 seconds *during the time when the Trust Shares trade on the Exchange* [over the Consolidated Tape Association's Network B].

(c)–(h) No Change.

(j) No Change.

(k) No Change.

(l) Index Fund Shares

(1)–(5) No Change.

(6) Listing Pursuant to SEC Rule 19b–4(e). The Exchange may approve a series of Index Fund Shares for listing pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(A) No Change.

(B) Index Methodology and Calculation. (I) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (II) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and (III) The current index value will be *widely* disseminated *by one or more major market data vendors at least* every 15 seconds *during the time when the Index Fund Shares trade on the Exchange* [over the Consolidated Tape Association's Network B].

(C)–(H) No Change.

(7)–(8) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Sections (i)(11) and (l)(6) of Phlx Rule 803 provide listing standards for Trust Shares and Index Fund Shares, respectively, to permit listing and trading of these securities pursuant to Rule 19b–4(e) under the Act.[3] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product, and the self-regulatory organization has a surveillance program for the product class.[4]

The Phlx rules for Trust Shares and Index Fund Shares currently provide that the current index value for the index underlying a series of Trust Shares (in the case of Phlx Rule 803(i)(11)) and Index Fund Shares (in the case of Phlx Rule 803(l)(6)) will be disseminated every 15 seconds over the Consolidated Tape Association's Network B. The Phlx believes that, rather than identifying specifically in their rules the index dissemination service (that is, the Consolidated Tape Association's Network B), it is preferable to reflect in the rules a requirement for wide dissemination of the underlying index values. This proposed rule change would make clear that the value of the underlying index must be widely disseminated by a reputable index dissemination service, such as the Consolidated Tape Association, Reuters, or Bloomberg. The Phlx believes that the specific identity of the index dissemination service is not necessary, and the purpose of the rule would be achieved, as long as the service used for dissemination is reputable, accepted in the investment community, and effects appropriately wide dissemination of the particular index.

The Exchange therefore proposes to change the generic listing standards for Trust Shares and Index Fund Shares to provide that the value of the underlying index must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Trust Shares or Index Fund Shares trade on the Exchange.

As currently is the case, if the official index does not change during some or all of the period when trading is occurring (as is typically the case with pre-market-open and after-hours trading, and also with foreign indexes because of time zone differences or holidays in the countries where such indexes' components trade), then the last official calculated index value must remain available throughout the Phlx trading hours.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Phlx believes that clarifying the rules helps all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

[3] 17 CFR 240.19b–4(e).

[4] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22,1998).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–57. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2005–57 and should be submitted on or before November 4, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[7] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act.[8] The Commission notes that the proposed index dissemination requirement is similar to the index dissemination requirement used in the listing standards for narrow-based index options.[9] The Phlx defines "one or more major market data vendor" to include the Consolidated Tape Association or private vendors, such as Reuters or Bloomberg.[10] The Commission believes, however, that it is critical that such service widely disseminate such index value to market participants.

The Phlx has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that it has recently approved similar proposals regarding the dissemination of the underlying index value for exchange traded funds traded on Nasdaq, the American Stock Exchange LLC ("Amex"), and the New York Stock Exchange, Inc. ("NYSE").[11] The Commission believes that granting accelerated approval of the proposal will allow the Phlx to immediately implement these listing standards for dissemination of the underlying index value that are in place on Nasdaq, the Amex, and the NYSE. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[12] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–2005–57) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–5653 Filed 10–13–05; 8:45 am]

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[7] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See e.g.*, Chicago Board Options Exchange Rule 24.2(b); International Securities Exchange Rule 2002(b); Pacific Exchange Rule 5.13; and Philadelphia Stock Exchange Rule 1009A(b) (listing standards for narrow-based index options requiring that, among other things, the current underlying index value be reported at least once every 15 seconds during the time the index option trades on the exchange).

[10] The Commission notes, however, that if a self-regulatory organization designates a data vendor, on an exclusive basis, to disseminate an index value on behalf of the self-regulatory organization, such vendor would be an "exclusive processor" under Section 3(a)(22)(B) of the Act and, absent an exemption, required to register as a securities information processor under Section 11A(b)(1) of the Act.

[11] *See* Securities Exchange Act Release Nos. 51748 (May 26, 2005), 70 FR 32684 (June 3, 2005) (SR–NASD–2005–024); 51868 (June 17, 2005), 70 FR 36672 (June 24, 2005) (SR–Amex–2005–044); and 52081 (July 20, 2005), 70 FR 43488 (July 27, 2005) (SR–NYSE–2005–44).

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5206]

Determination Under Section 564 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103–236, as Amended; Suspending Prohibitions on Certain Sales and Leases Under the Anti-Economic Discrimination Act of 1994

Pursuant to the authority vested in the President by Section 564 of the Foreign Relations Authorization Act ("the Act"), Fiscal Years 1994 and 1995, Public Law 103–236, as amended, which was delegated to the Secretary of State on April 24, 1997, I hearby determine that instituting the suspension of the application of Section 564(a) of the Act to Iraq and extending the suspension of the application of Section 564(a) of the Act to the following eight countries until May 1, 2006 will promote the objectives of section 564: Bahrain, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, United Arab Emirates, Yemen.

This determination will be reported to the appropriate committees of the Congress and published in the **Federal Register**.

Dated: May 13, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

Editorial Note: This document was received in the Office of the Federal Register on October 11, 2005.

[FR Doc. 05–20609 Filed 10–13–05; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2005–22679; Notice No. 05–09]

Guidance on Aircraft Noise Certification Documents for International Flights

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The FAA is notifying operators of a proposed advisory circular entitled "Guidance on Aircraft Noise Certification Documents for International Flights." This advisory circular (AC) is in response to the International Civil Aviation Organization (ICAO) adoption of three acceptable options for managing noise certification documents. This AC offers guidance to affected operators on

aircraft noise certification documentation they may choose to carry on board the aircraft that fly to a foreign country. This AC is designed to assist operators in preparing noise certification documents that may be requested by foreign authorities or airports. A suggested document format for operators to present noise certification documentation is provided.

DATES: Send your comments on or before December 13, 2005.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22679 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to this notice in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Laurette Fisher, Office of Environment and Energy (AEE–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3561; facsimile (202) 267–5594.

Request for Comment

The FAA is seeking comment on the following proposed AC, "Guidance on Aircraft Noise Certification Documents for International Flights." The FAA encourages all affected operators to participate in this process by commenting on this proposed AC. Comments received in response to this request will be considered in the preparation of the final AC.

Issued in Washington DC on October 5, 2005.

Paul R. Dykeman,

Deputy Director of Environment and Energy.

[FR Doc. 05–20635 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Pearland Regional Airport, Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Pearland Regional Airport in accordance with Title 49, United States Code, Section 47153.

DATES: Comments must be received on or before November 14, 2005.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. A.M. Rivera, Airport Manager, at the following address: Pearland Regional Airport, 17622 Airfield Lane, Pearland, TX 77581.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Senior Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650. Telephone: (817) 222–5614. E-mail: *ben.guttery@faa.gov*. Fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at Pearland Regional Airport under the provisions of Title 49, United States Code, section 47153.

On September 15, 2005, the FAA determined that the request to release property at the Pearland Regional Airport, submitted by the airport, met the procedural requirements of the Federal Aviation Regulations, part 155.

The following is a brief overview of the request:

Pearland Regional Airport requests the release of 2.804 acres of non-aeronautical use airport property. The land was one of several parcels acquired by the airport with an Airport Improvement Program (AIP) grant. The land will be traded for the like amount in a nearby runway protection zone.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Pearland Regional Airport in Pearland, Texas, telephone number 281–482–7751.

Issued in Fort Worth, Texas on September 15, 2005.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 05–20631 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meeting of the National Parks Overflights Advisory Group Aviation Rulemaking Committee

ACTION: Notice of meeting; correction.

SUMMARY: This document makes a correction to a section heading in the notice of meeting published in the **Federal Register** on October 4, 2005. That notice announced an upcoming meeting of the National Parks Overflight Advisory Group Aviation Rulemaking Committee.

EFFECTIVE DATE: This correction is effective on October 14, 2005.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Manager, Executive Resource Staff, Western Pacific Region, telephone: (310) 725–3800.

Correction

In the notice of meeting FR Doc. 05–19785 published on October 4, 2005, (70 FR 57922), make the following correction:

1. On page 57923, in column 1 at the bottom of the page, correct the heading "Agenda for the November 7–8, 2005 Meeting" to read "Agenda for the November 8–9, 2005 Meeting."

Issued in Washington, DC on October 7, 2005.

Tony Fazio,

Director, Office of Rulemaking.

[FR Doc. 05–20633 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 135; Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 135 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held November 2–3, 2005 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, NW., Suite 805, Colson Board Room, Washington, DC.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 135 meeting. The agenda will include:

- March 2–3:
- Opening Plenary Session (Welcome and Introductory Remarks).
- Approval of Summary from the Forty-Fifth Meeting.
- RTCA Paper No. 099–05/SC135–650.
- Review Results of EUROCAE ED–14 Meeting.
- Discuss Options and Directions of DO–160 User Guide.
- Review Status of Working Group 16.
- Review Status of Working Group 21.
- Review Change Proposals for all other Sections.
- Review Schedule to Release DO–160F.
- Closing Plenary Session (New/Unfinished Business, Date and Place of Next Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on October 5, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–20632 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impacts Statement: Yamhill County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing a notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Yamhill County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, PE, Environmental Coordinator, FHWA Oregon Division, 530 Center Street NE., Suite 100, Salem, OR 97301, (503) 399–5749, *elton.chang@fhwa.dot.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation (ODOT), will prepare a Design (Tier 2) Environmental Impact Statement (EIS) on a proposal to construct the Newberg Dundee Bypass (Bypass), in Yamhill County, Oregon. The proposed Bypass project is a part of the Newberg Dundee Transportation Improvement Project (NDTIP), which seeks to improve regional and local transportation along the Oregon Highway 99W corridor in the Newberg and Dundee area by reducing traffic congestion. The proposed Bypass project area encompasses a section of OR Highway 99W that extends northeast across Yamhill County from the OR Highway 99W/OR Highway 18 intersection near Dayton to Rex Hill east of the City of Newberg. The eastern terminus is located at OR Highway 99W mile post 20.08. The western terminus is located where OR Highway 99W intersects with Oregon 18 at OR Highway 18 mile post 51.84.

FHWA and ODOT are conducting the environmental analysis of the Bypass in a two-tiered NEPA process. The Tier 1 work, which was the subject of a Location Environmental Impact Statement LFEIS, identified feasible alternative corridors for the Bypass project, and culminated in a Record of Decision on the preferred corridor alternative. This Preferred Alternative will be carried forward through the Tier 2, DEIS analysis for more detailed study. The Tier 2 work will involve further refinement of the Preferred Alternative, including locating the Bypass within the preferred corridor, evaluation of detailed engineering options, and additional environmental analysis.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand and to reduce congestion. Traffic congestion and travel delays have reached unacceptable levels for those who live and work in or travel through Newberg, Dundee and the surrounding areas. By 2025, Newberg and Dundee are expected to have congestion in their downtowns for over 14 hours a day. The 2002 peak period travel time between East Newberg and Dayton is about 25 minutes. Without the Bypass the travel time in 2025 will be 40 minutes on OR Highway 99W. If the Bypass were constructed the travel time between East Newberg and Dayton on OR Highway 99W would be 19 minutes and the travel time on the Bypass would be 12 minutes.

ODOT uses volume to capacity ratios to measure the levels of mobility on state highways. The ratios show the volume of traffic over the capacity of the highway to handle traffic. When the ratio approaches 1.0 the entire capacity of the highway is being used and the highway is very congested. At this point even minor disruptions in flow can cause severe backups. The v/c ratios for most of the major intersections on OR Highway 99W in Newberg and Dundee exceeded 1.0 in 2002 during peak travel periods. ODOT's policy and the goal set by the Newberg Dundee Transportation Improvement Project Oversight Steering Team for urban highways is a volume to capacity ratio of 0.75.

Newberg and Dundee want to make their downtowns more pedestrian friendly. Noise levels measured on the sidewalk in Newberg in 2002 were 72 decibels. This is loud enough to require that people need to raise their voices to converse. The heavy truck traffic through town is the source of most of the noise. Truck traffic also adds to the congestion in the towns. By 2025, Dundee is expected to have about 3,700 freight trips per day rumbling through town and Newberg is expected to have 4,400 freight trips per day.

Alternatives under consideration include alternatives within the approved corridor and the No Build alternative for comparison purposes and various design options.

Letters describing the proposed action and soliciting comments related to this proposed action will be sent to Federal, State and local agencies, and to private

organizations and citizens who have previously expressed or are known to have interest in this proposal. A public meeting will be held on October 11, 2005, in Newberg, Oregon to initiate the DEIS scoping process and present project information. ODOT expects to publish a draft DEIS by the end of 2006. After publication of the draft DEIS, a minimum of 30 days will be scheduled for a public comment period. In addition, a public hearing will be held on the draft DEIS. Public notice will be given of the time and location of the meeting and public hearing. The draft DEIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities shall apply to this program.)

For additional details on the Newberg-Dundee Bypass Project and how to get involved, please use our project Internet Web site: *http://www.newbergdundeebypass.org.*

If you do not have Internet access, please call David Stocker at (503) 963–7891 to be placed on a mailing list for newsletters and meeting notices.

Dated: Issued on October 4, 2005.

Elton Chang,

Environmental Coordinator, Oregon Division, FHWA.

[FR Doc. 05–20562 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005–22694]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DOROTHY JEAN.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–22694 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 14, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 22694. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 7th Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DOROTHY JEAN is:

Intended Use: "I would like to run a small scenic tour business in the Castine, Maine area. I would use this vessel to take no more than 6 people on tours of the harbor, and show them how to catch lobster."

Geographic Region: Penobscot Bay, Maine.

Dated: October 7, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–20585 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 22695]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ESPIRITU.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–22695 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 14, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 22695. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001.

You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ESPIRITU is:

Intended Use: "sailboat chartering."

Geographic Region: Pacific Ocean—California.

Dated: October 7, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–20586 Filed 10–13–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collection; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collection listed below in this notice.

DATES: We must receive your written comments on or before December 13, 2005.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

You must reference the information collection's title, form number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on proposed or continuing information collection listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following information collection:

Title: Formulas for fermented products.

OMB Number: 1513–0118.

TTB Form Number: n/a (letterhead application).

Abstract: The collection is used, along with other supporting documents, to establish that the standards for production are followed for a given type and style of beer.

Current Actions: There are no changes to this information collection and it is being submitted for reinstatement purposes only.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 500.

Dated: October 6, 2005.

Francis W. Foote,

Director, Regulations and Rulings Division.

[FR Doc. 05–20545 Filed 10–13–05; 8:45 am]

BILLING CODE 4810–31–P

Corrections

Federal Register
Vol. 70, No. 198
Friday, October 14, 2005

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21703; Airspace Docket No. 05–ACE–19]

Modification of Class D and Class E Airspace; Topeka, Forbes Field, KS

Correction

In rule document 05–20179 appearing on page 58607 in the issue of Friday, October 7, 2005, make the following correction:

In the second column, the CFR heading is corrected to read as set forth above.

[FR Doc. C5–20179 Filed 10–13–05; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9225]

RIN 1545–BD53

Corporate Reorganizations; Guidance on the Measurement of Continuity of Interest

Correction

In rule document 05–18263 beginning on page 54631 in the issue of Friday, September 16, 2005, make the following correction:

PART 1—[CORRECTED]

On page 54634, under **PART 1—INCOME TAXES**, in the second column, in amendatory instruction 11, in the second line, "where the language" should read "remove the language".

[FR Doc. C5–18263 Filed 10–13–05; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
October 14, 2005

Part II

Environmental Protection Agency

40 CFR Parts 9, 122, and 403
Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution; Final Rule
Availability of and Procedures for Removal Credits; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122 and 403

[OW–2002–0007; FRL–7980–4]

RIN 2040–AC58

Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's final rule revises several provisions of the General Pretreatment Regulations that address requirements for, and oversight of, Industrial Users who introduce pollutants into Publicly Owned Treatment Works (POTWs). This final rule includes changes to certain program requirements to be consistent with National Pollutant Discharge Elimination System (NPDES) requirements for direct dischargers to surface waters. Today's action will reduce the regulatory burden on both Industrial Users and State and POTW Control Authorities without adversely affecting environmental protection and will allow Control Authorities to better focus oversight resources on Industrial Users with the greatest potential for affecting POTW operations or the environment.

DATES: This regulation is effective November 14, 2005. For judicial review purposes, this final rule is promulgated as of 1 p.m. (Eastern Time) on October 28, 2005, as provided at 40 CFR 23.2.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OW–2002–0007. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room B102, y1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket Office is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Jan Pickrel, Water Permits Division, Office of Wastewater Management, Office of Water, (4203), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–7904, e-mail address: *pickrel.jan@epa.gov.* Greg Schaner, Water Permits Division, Office of Wastewater Management, Office of Water, (4203), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0721, e-mail address: *schaner.greg@epa.gov.*

SUPPLEMENTARY INFORMATION: Information in this preamble is organized as follows:

A. General Information

1. Does this final rule apply to me?

Entities potentially affected by this action are governmental entities responsible for implementation of the National Pretreatment Program and industrial facilities subject to Pretreatment Standards and Requirements. These entities include:

Category	Examples of regulated entities
Local government	Publicly Owned Treatment Works.
State government	States and Tribes acting as Pretreatment Program Control Authorities or as Approval Authorities.
Industry	Industrial Users of POTWs.
Federal Government	EPA Regional Offices acting as Pretreatment Program Control Authorities or as Approval Authorities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization or facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 403.3, 403.5, 403.6, 403.7, 403.8, 403.12, and 403.15 of Part 403 of Title 40 of the Code of Federal Regulations.

If you have questions about the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

2. How can I get copies of this document and other related information?

a. *Docket.* EPA has established an official public docket for this action under Docket ID No. W–00–27. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

b. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/* or at the "Pretreatment" page at *http://cfpub.epa.gov/npdes/home.cfm?program_id=3.*

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 in section A.2.a. Once in the system, select "search", then key in the appropriate docket identification number (OW–2002–0007).

3. What process governs judicial review of this rule?

Under Section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's rule may be obtained by filing a petition for review in the United States Circuit Court of Appeals within 120 days from the date of promulgation of this rule. For judicial review purposes, this final rule is promulgated as of 1 p.m. (Eastern time) on October 28, 2005 as provided at 40 CFR 23.2. Under section 509(b)(2) of the CWA, the requirements of this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

B. Under What Legal Authority Is This Final Rule Issued?

Today's final rule is issued under the authority of Sections 101, 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(h)(5) and 301(i)(2), 304(e) and (g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act as amended.

C. How is This Preamble Organized?

There is an outline for the preamble to today's final rule in the opening of this **SUPPLEMENTARY INFORMATION** section. For each distinct issue of the final rule, the preamble is written in a question-and-answer format that is designed to help the reader understand the information in the rule. Under each issue, there are subsections that provide the context for the final rule, including a discussion of the rules in place prior to today's rulemaking, the changes that were proposed, the changes that are being finalized (including significant differences from the proposal), and a summary of major comments and EPA response.

List of Acronyms

BAT—best available technology economically achievable
BCT—best conventional pollutant control technology
BOD—biochemical oxygen demand
BPJ—best professional judgment
BMP—Best Management Practice
BPT—best practicable control technology currently available
CIU—Categorical Industrial User
CFR—Code of Federal Regulations
CWA—Clean Water Act
ELG—effluent limitations guideline
EMS—environmental management system
EPA—Environmental Protection Agency
EQIP—Environmental Quality Incentives Program
FR—**Federal Register**
ICR—Information Collection Request
IU—Industrial User
NODA—Notice of Data Availability
NOI—notice of intent
NPDES—National Pollutant Discharge Elimination System
NSCIU—Non-Significant Categorical Industrial User
NTTAA—National Technology Transfer and Advancement Act
OMB—U.S. Office of Management and Budget
POTW—Publicly Owned Treatment Works
PSES—Pretreatment Standards for Existing Sources
RFA—Regulatory Flexibility Act
SBA—U.S. Small Business Administration
SBAR (panel)—Small Business Advocacy Review Panel
SBREFA—Small Business Regulatory Enforcement Fairness Act
SIU—Significant Industrial User
SNC—Significant Noncompliance
SRF—State Revolving Fund
UMRA—Unfunded Mandates Reform Act
WWTP—wastewater treatment plant

D. What Is the Comment Response Document?

EPA received more than 220 comments on the proposed rule. EPA evaluated all the significant comments submitted and prepared a Comment Response Document containing the Agency's responses to those comments. The Comment Response Document complements and supplements this preamble by providing more detailed explanations of EPA's final actions. The Comment Response Document is available at the Water Docket. See Section E below for additional information.

E. What Other Information Is Available To Support This Final Rule?

In addition to this preamble, today's final rule is supported by other information that is part of the administrative record, such as the Comment Response Document, and the key supporting documents listed below. These supporting documents and the administrative record are available at the Water Docket and via e-Docket:

- Information Collection Request
- Past EPA guidance manuals and policy documents
- Stakeholder communications
- EPA data collected in support of this rulemaking

I. Background Information

A. What Is the National Pretreatment Program?

The National Pretreatment Program is part of the Clean Water Act (CWA)'s water pollution control program. The program is a joint regulatory effort by local, state, and Federal authorities that require the control of industrial and commercial sources of pollutants discharged to municipal wastewater plants (called "Publicly Owned Treatment Works" or "POTWs"). Control of pollutants prior to discharge of wastewater to the sewer minimizes

the possibility of pollutants interfering with the operation of the POTW and reduces the levels of toxic pollutants in wastewater Discharges from the POTW and in the sludge resulting from municipal wastewater treatment.

The Pretreatment Program is a core part of the CWA's National Pollutant Discharge Elimination System (NPDES) program, and it has helped communities:

- Maintain and restore watershed quality;
- Encourage pollution prevention;
- Increase beneficial uses of sewage sludge;
- Prevent formation of poisonous gases in the sanitary sewer system;
- Meet wastewater Discharge standards; and
- Institute emergency-prevention measures.

B. What Regulation Is EPA Revising?

EPA is today streamlining and clarifying various provisions of the General Pretreatment Regulations for Existing and New Sources of Pollution codified at 40 CFR Part 403. The CWA directs EPA to develop regulations in order to control pollutants which may pass through or interfere with POTW treatment processes or contaminate sewage sludge. On June 26, 1978, EPA promulgated the General Pretreatment Regulations, which established standards and procedures for controlling the introduction of wastes into POTWs (43 FR 27736). There have been a number of revisions to the General Pretreatment Regulations. The last major revisions were to implement improvements arising from the Domestic Sewage Study (Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works) (55 FR 30082, July 24, 1990).

The General Pretreatment Regulations require POTWs that meet certain criteria to develop Pretreatment programs to control industrial Discharges into their sewage collection systems. These programs must be approved by either EPA or states acting as the Pretreatment "Approval Authority." More than 1,400 POTWs have developed Approved Pretreatment Programs pursuant to the regulations in 40 CFR 403.8. These POTWs act as the Pretreatment "Control Authority" with respect to the Industrial Users that discharge to their systems. In the absence of an approved POTW Pretreatment Program, the State or EPA Approval Authority serves as the Control Authority.

Industrial Users of POTWs must comply with Pretreatment Standards prior to introducing pollutants into a POTW. POTWs are required to impose "local limits" to prevent Pass Through and Interference from the pollutants discharged into their systems. The General Pretreatment Regulations also include general prohibitions that forbid Industrial Users from causing Pass Through and Interference, and specific prohibitions against the discharge of pollutants that cause problems at the POTW such as corrosion, fire or explosion, and danger to worker health and safety. EPA has also developed National categorical Pretreatment Standards that apply numeric pollutant limits to Industrial Users in specific industrial categories. The General Pretreatment Regulations include reporting and other requirements necessary to implement these categorical Standards (40 CFR 403.12 (b)).

Today's final rule modifies several provisions of the existing Pretreatment Regulations. The rule includes a variety of changes which will be described further in Section E.

C. Why Is EPA Revising the Existing General Pretreatment Regulations?

By finalizing today's rule, EPA is working to improve the National Pretreatment Program to protect public health and the environment, while maintaining or improving the program's effectiveness. Although adoption of the General Pretreatment Regulations has resulted in more consistent implementation of the Pretreatment program on a national basis, many individual POTWs and Industrial Users have experienced problems implementing various requirements.

EPA's objective in finalizing today's streamlining regulation is to achieve better environmental results at a lower cost by allowing Control Authorities to better focus oversight resources where they will do the most good. The revisions in today's final rule achieve this objective by reducing the burden of technical and administrative requirements that EPA has determined provide minimal environmental benefit but consume significant resources of Industrial Users, and POTW and state Control Authorities. In designing these revisions, EPA took care to ensure that the changes being finalized do not reduce the current environmental protections in place.

The importance of finalizing today's streamlining rule was highlighted in two recent reports. The Office of Management and Budget (OMB) included the issuance of the final rule among a list of steps the Federal government would take to reduce the cost burden on the manufacturing sector. See Regulatory Reform of the U.S. Manufacturing Sector (OMB, 2005), which is posted at *http://www.whitehouse.gov/omb/inforeg/reports/manufacturing_initiative.pdf.* EPA's Office of Inspector General (OIG) also recommended that the Office of Water set milestones for finalizing this streamlining rule as part of a broader effort to improve the effectiveness of the National Pretreatment Program. See Recommendation # 4.2 of EPA Needs to Reinforce Its National Pretreatment Program (OIG, Report 2004–P–00030, September 2004), posted at *http://www.epa.gov/oig/reports/2004/20040928–2004–P–00030.pdf.*

D. What Are the Roles of Key Entities Involved in the Final Rule?

EPA recognizes the role of many interested parties in the development of, and, ultimately, the successful implementation of this final rule. To the greatest extent possible, EPA has attempted to strike a reasonable balance among the many interests. A short summary of their roles is provided below.

1. *POTWs.* Publicly Owned Treatment Works (POTWs) collect wastewater from homes, commercial buildings, and industrial facilities and transport it via a series of pipes, known as a collection system, to the treatment plant. Today, there are an estimated 14,800 POTWs. Most POTWs are not designed to treat the toxics in commercial and industrial wastes which can cause serious problems. The General Pretreatment Regulations require POTWs that meet certain criteria to develop Pretreatment programs to control industrial Discharges into their sewage collection systems. These POTWs act as the Pretreatment "Control Authority" with respect to the Industrial Users that discharge to their systems. POTWs play a key role in the enforcement of the Pretreatment program through the development and implementation of Enforcement Response Plans.

2. *States.* Thirty-four states are authorized to serve as Approval Authorities for implementation of the Pretreatment Program. In the absence of an Approved POTW Pretreatment Program, the state may serve as the Control Authority.

3. *EPA.* EPA's statutory responsibility is to establish national regulations such as those covering the Pretreatment Program, which protect and restore the chemical, physical, and biological integrity of the Nation's waters. EPA also develops policy and guidance and provides training and oversight for program implementation. EPA's regional offices also serve as the Approval Authority for state

Pretreatment programs, where the state is not authorized to run the program, and as the Control Authority for POTWs without an approved Pretreatment Program in these states.

4. *Industrial Dischargers.* Industrial Users of POTWs must comply with Pretreatment Standards prior to introducing pollutants into a POTW. The General Pretreatment Regulations include general prohibitions that forbid Industrial Users from causing Pass Through and Interference, and specific prohibitions against the discharge of pollutants that cause problems at the POTW such as corrosion, fire or explosion, and danger to worker health and safety.

EPA has also developed National categorical Pretreatment Standards that apply numeric and narrative pollutant limits to Industrial Users in specific industrial categories. The General Pretreatment Regulations include reporting and other requirements necessary to implement these categorical Standards (40 CFR 403.12(b)).

5. *Other stakeholders.* Trade associations, professional organizations, environmental interest groups, and the public have an interest in the Pretreatment of industrial and commercial waste and have been involved in this rulemaking through comments and participation in stakeholder meetings.

E. What Principles Guided EPA's Decisions in This Rule?

EPA has considered the implementation of the current General Pretreatment Regulations, changes in industry, the comments on the proposed rule, and relevant studies, data, and reports in developing this final rule. The Agency has tried to ensure this final rule is based on sound science, protects existing water quality gains, and is consistent with current Pretreatment guidance and policy documents. EPA made this final rule as simple and easy to understand as possible, and has attempted to provide a clear understanding of who is affected and what they are expected to do. The hallmark of this rule is that it reduces the burden of compliance with the General Pretreatment Regulations, while at the same time protecting the environment.

F. What Are the Major Elements of This Final Rule? Where Do I Find Specific Requirements?

This section provides a summary of the major elements of this final rule and a brief index on where each of the requirements is located in the final regulations. The rule makes the following changes:

- Provides POTWs with the authority to grant monitoring waivers to industrial facilities where they document that pollutants are not present at the facility or anywhere in the wastestream. EPA notes that this authority is already available in the National Pollutant Discharge Elimination System (NPDES) regulations for point sources discharging directly to surface waters.
- Authorizes POTWs to use general control mechanisms (e.g., permits) to regulate multiple industrial dischargers that share common characteristics.
- Clarifies that POTWs can use Best Management Practices (BMPs) as an alternative to numeric limits that are developed to protect the POTW, water quality, and sewage sludge.
- Clarifies certain requirements regarding the frequency of on-site industrial facility inspections to evaluate the adequacy of controls for "Slug Discharges".
- Provides greater flexibility in the use of certain sampling techniques, and establishes greater consistency with the sampling protocols in other parts of EPA's regulations.
- Provides the Control Authority with the discretion to authorize the use of equivalent concentration limits in lieu of mass limits for certain industrial categories, and allows the conditional use of equivalent mass limits in lieu of concentration-based limits where appropriate to facilitate adoption of new, water-conserving technologies.
- Authorizes POTWs to establish alternative sampling, reporting, and inspection requirements for certain classes of categorical Industrial Users (CIUs).
- Clarifies the definition of significant noncompliance (SNC) as it applies to violations of instantaneous and narrative requirements, and late reports, and provides additional options for publishing lists of industrial facilities in SNC annually in the newspaper. The rule also retains existing rules and policies regarding the application of Technical Review Criteria (TRC) and the use of the "rolling quarter" approach in determining SNC status.
- Provides updated references relating to requirements that POTWs must meet to adjust removal credits for combined sewer overflows (CSOs).
- Makes other miscellaneous changes designed to maintain consistency with the NPDES regulations or to correct typographical errors.

The following table indicates where these changes can be found in the General Pretreatment Regulations at 40 CFR part 403.

Issue	Section of 40 CFR 403 rules
Sampling for pollutants not present	403.8(f)(2)(v), 403.12(e)
General control mechanisms	403.8(f)(1)(iii)
Best Management Practices	403.5, 403.8(f), 403.12(b), (e), (h)
Slug control plans	403.8(f)(1)(iii)(B)(6), 403.8(f)(2)(vi))
Equivalent concentration limits for flow-based Standards	403.6(c)(6)
Equivalent mass limits for concentration-based Standards	403.6(c)(5)
Use of grab and composite samples	403.12(b), (d), (e), (g), (h)
Significant noncompliance criteria	403.8(f)(2)(viii)
Removal credits	403.7(h)
Non-Significant CIU	403.3(v)(2), 403.8(f)(2)(v), (6), 403.12(e)(1), (g), (i), (q)
Middle Tier CIU	403.8(f)(2)(v)(C), 403.12(e)(3), (i)
Miscellaneous changes	403.12(g), (j), (l), (m)

II. How Was This Final Rule Developed?

EPA initiated this effort in response to a Presidential Report on "Reinventing Environmental Regulations" (March 1995). The Report pledged to provide "more common sense and fairness in our regulations" with an ultimate goal of providing greater flexibility, reducing burden, and achieving greater environmental results at less cost. In 1995, EPA's Office of Wastewater Management started an evaluation of all of the General Pretreatment Regulations in order to identify streamlining opportunities. Based on input from various stakeholders, EPA developed issue papers that summarized 11 areas

in which the Pretreatment Regulations might be streamlined.

In May 1996, the issue papers were distributed to stakeholders (States, cities, trade associations, professional organizations, and environmental interest groups) for comment. The Agency also considered recommendations developed through a joint Association of Metropolitan Sewerage Agency ("AMSA", now the "National Association of Clean Water Agencies") and Water Environment Federation workshop held in 1996, which included Pretreatment experts from many stakeholder perspectives. In response to comments received on the issue papers and the joint workshop's recommendations, EPA prepared a draft proposal and preamble and distributed it for comment in May 1997. The proposed rule was published in the **Federal Register** on July 22, 1999 (64 FR 39564).

EPA received 221 sets of comments on the proposed rule. Comments were received from individual POTWs and Industrial Users, trade groups representing those interests, states, and one environmental organization (the Natural Resources Defense Council). In finalizing this rule, EPA carefully reviewed the issues raised in the public comments. Due to the intervening time between the proposed and final rules, EPA also revisited the major assumptions underlying each rule change to verify that these assumptions were still valid. In a few areas, this process required research or additional data to support certain provisions, and discussions with stakeholders expressing continued interest in the rule regarding their comments on the proposed rule.

III. Description of Final Rule Actions

Today's final rule addresses 12 specific issues and a few miscellaneous changes pertaining to the General Pretreatment Regulations. This section describes the context of these changes, records how the proposal and final rule differ, and summarizes EPA's rationale for specific actions and how the Agency responded to significant comments.

EPA notes that capitalized terms in this and other sections (e.g., categorical Pretreatment Standards, Interference, Pass Through, etc.) should signal to the reader that these are terms defined in 40 CFR 403.3.

A. Sampling for Pollutants Not Present (40 CFR 403.8(f)(2)(v) and 403.12(e))

Today's rule allows the Control Authority to authorize an Industrial User subject to categorical Pretreatment Standards to forgo sampling of a pollutant if the Industrial User demonstrates through sampling and a technical evaluation of its facility operations, that a given pollutant is neither present nor expected to be present in the Discharge, or is only present at background levels from intake water without any increase in the pollutant due to the activities of the Industrial User. There is similar language in EPA's NPDES permitting regulations for direct dischargers. See 40 CFR 122.44(a)(2). The POTW Control Authority to which the Industrial User discharges may also reduce its monitoring for the pollutant to once during the term of the Categorical Industrial User's control mechanism. Note that in the discussion of this issue, when EPA uses the phrase "pollutants not present" it is using this phrase as short-hand for "pollutants neither present nor expected to be present above background levels". In addition, because the requirements of 40 CFR 403.8(f)(2) apply to POTWs with approved Pretreatment programs rather than Control Authorities in general, the discussion here distinguishes between the authority granted to Control Authorities in 40 CFR 403.12(e) to waive monitoring for pollutants not present, and the reduction in monitoring requirements for POTWs for these pollutants in 40 CFR 403.8(f)(2)(v).

1. What Were the Rules in Place Prior to Today's Rulemaking?

Section 403.12(e)(1) required Industrial Users subject to categorical Pretreatment Standards to submit reports to the Control Authority at least twice each year indicating the nature and concentration of all pollutants in their effluent that are limited by an applicable Standard. Prior to today's rulemaking, the Control Authority was not authorized to reduce monitoring of pollutants regulated by the applicable categorical Pretreatment Standard to less than twice per year. 40 CFR 403.8(f)(2)(v) also required POTWs to sample these Industrial Users at least annually to independently verify compliance with the Standard. Semiannual sampling by the Industrial User and annual sampling by the POTW was required for all pollutants limited by the categorical Pretreatment Standard even if certain pollutants regulated by the Standard were not reasonably expected to be present.

2. What changes did EPA propose?

The proposal would amend the current regulation to authorize the Control Authority to waive the sampling requirements for an Industrial User subject to a categorical Pretreatment Standard for a pollutant if the pollutant was not expected to be present in the wastestream in a quantity greater than the background level present in its water supply, with no increase in the pollutant in the wastewater attributable to the industrial process. In lieu of monitoring for the pollutants determined not present, the Industrial User would submit a certification as part of its semiannual monitoring reports that there had been no increase in the pollutant in its wastewater due to its activities. This change would also reduce a POTW's sampling requirement once it had determined that a pollutant was not expected to be present. However, as proposed, the reduced sampling would not have been available to facilities subject to the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) guidelines, 40 CFR part 414.

3. What changes is EPA finalizing in today's rule?

Today, EPA is adopting the proposed changes which authorize a Control Authority to waive the monitoring requirements in semiannual reports required under 40 CFR 403.12(e) for individual pollutants, including indicator or surrogate pollutants, for an Industrial User subject to a categorical Pretreatment Standard. A Control Authority may waive this requirement if it determines that the pollutant is neither present nor expected to be present, at levels greater than that of the intake water, without any increase in the pollutant due to the activities of the Industrial User. The waiver will not be available for monitoring required for the baseline monitoring report required under 40 CFR 403.12(b) or the 90-day compliance report required under 40 CFR 403.12(d). The Industrial User must continue to conduct at least twice-per-year monitoring until the waiver is both granted by the Control Authority and incorporated into the Industrial User's control mechanism. The POTW's annual monitoring requirements for the pollutant for which a monitoring waiver is granted may be reduced to a minimum of once during the effective period of the Industrial User's control mechanism.

In finalizing the rule, EPA is making the following changes to the proposed rule:

Coverage for OCPSF Facilities: EPA has determined that it is appropriate for the monitoring waiver to be available to Industrial Users subject to the OCPSF guidelines and is not limiting the availability in any way different from other Categorical Industrial Users.

Industrial User Sampling Data: The final rule requires that to demonstrate that the pollutant is not present, the Industrial User must provide the results of one or more samples prior to treatment which are representative of all process wastewater.

Notice to Control Authority if Pollutant Found to be Present: The final rule includes a provision which requires that in the event that a pollutant is subsequently found to be present or is expected to be present, the Industrial User must immediately resume monitoring and notify the Control Authority.

Control Mechanism Issues: EPA clarifies that the Control Authority must include any waiver granted to an Industrial User in the User's control mechanism. The Control Authority must also document the reasons for authorizing the waiver and maintain any information submitted by the User in support of the waiver for at least three years after expiration of the waiver. The waiver is valid only for the duration of the control mechanism. In order to continue the waiver for the period of the next control mechanism, the Industrial User will need to reapply for the waiver, including the submission of appropriate monitoring data. The control mechanism must include the requirement for the Industrial User to immediately notify the Control Authority in the event that the pollutant is found or suspected to be present, and to resume monitoring at least semiannually. The control mechanism still must include all applicable categorical Standards, even those Standards for which monitoring has been waived.

Waiver Does Not Supercede Other Certifications: EPA has included a provision which states that the waiver of monitoring requirements cannot replace any certification requirements that have been established in specific categorical Pretreatment Standards.

4. Summary of Major Comments and EPA Response

How does EPA define "not present?" In the preamble to the proposed amendments, EPA specifically requested comment on how to define what is meant by "not present." Several commenters suggested that a precise definition was not necessary based on the regulatory context. Other commenters suggested that it be defined in terms of a percentage of the applicable limit, while others suggested that the term be defined as at or below the levels found in the water supply. The final regulatory language clearly indicates that monitoring for a pollutant can be waived as long as the levels in the untreated wastewater do not exceed the levels in the intake water based on "sampling and other technical factors." EPA did not promulgate a definition of not present when the similar NPDES revision was finalized, and EPA continues to view the final regulatory language as sufficiently clear to avoid confusion.

In response to commenters that suggested that "not present" be defined as a percentage of the applicable categorical Standard, EPA notes that today's waiver is not for pollutants that are not reasonably expected to violate the Standard, but rather for pollutants that are neither present nor expected to be present in the Discharge above background levels. Therefore, the level of pollutant in the Discharge in relation to the Standard is not the relevant benchmark for the Control Authority's determination whether the waiver request should be granted. Instead, what matters in the determination is whether the Industrial User's practices or industrial processes add the pollutant. The Control Authority already has the ability to reduce monitoring to as infrequently as twice per year for any pollutants that are in the Discharge but are not reasonably expected to violate the Standard. However, if the background level from the Industrial User's intake water already exceeds the applicable categorical Standard, a waiver of the monitoring requirements would not be available unless the Control Authority has adjusted the categorical Standard using the net/gross provision of 40 CFR 403.15, and the pollutant is not added to the wastewater by the discharger's practices or processes.

Several commenters also suggested that if a pollutant is added in "negligible" amounts or in amounts equal to "typical" domestic levels, the Control Authority should still be authorized to grant the monitoring waiver. EPA addressed this issue in the preamble to the final NPDES regulation dealing with a waiver of monitoring requirements for direct dischargers. There, EPA stated:

> "EPA declines to allow monitoring waivers for pollutants that are added by dischargers in minute amounts (e.g., use of common cleaners or from research operations) because human activity might lead to substantial increases in those pollutant Discharges which may threaten the aquatic environment. Consequently, there is a continuing need to monitor those pollutants. EPA also notes that at least one national effluent guideline addresses the introduction of incidental amounts of pollutants from cleaning, maintenance, or research operations and EPA does not believe it is appropriate to apply the waiver to a pollutant that is added to the wastestream and subject to an effluent guideline. See 40 CFR 414.11(b) (applying the Organic Chemicals, Plastics, and Synthetic Fibers Effluent Guidelines to wastewater Discharges from research and development operations). Metals or other pollutants that can leach from pipes may also pose a threat to the environment and EPA believes monitoring should be retained for such Discharges. With respect to pollutants which occur in amounts below "levels of concern", the discharge of such pollutants can also increase from human activity and EPA believes that monitoring is necessary to ensure that an appropriate level of treatment continues to be provided." (65 FR 30892, May 15, 2000).

Nothing submitted by commenters has changed the Agency's mind in the case of indirect dischargers with respect to its earlier conclusion.

Some commenters also suggested that EPA clarify that the term "quantities" as used in the proposal may mean mass loading in addition to concentration. EPA agrees that there may be instances where the use of mass may be more appropriate than concentration, and therefore will allow Control Authorities to use pollutant mass to compare the levels of pollutants in the wastewater to the levels of pollutants in the intake water. If the Industrial User can demonstrate through its technical evaluation that a specific pollutant is not added, and can demonstrate through a mass balance that any increases in the wastestream concentration are due only to evaporative losses or other similar reductions in the volume of wastewater discharged, then a monitoring waiver may be approved by the Control Authority. Note that accurate flow measurements will be necessary to perform the appropriate mass-balance calculations and demonstrate that small amounts of the pollutant are not added in the course of the facility activity. One example submitted by a commenter notes that cooling tower maintenance chemicals may add the pollutant of concern to the wastestream. If the pollutant of concern is added by the User in any way to the wastestream, then the Industrial User would not be eligible for the waiver. To the extent that the concentration is increased significantly such that it may impact the POTW, EPA would expect that a monitoring waiver would not be granted. In response to this comment, EPA is revising the language in the final regulation to refer to the "levels" of pollutants in the intake water rather than the "concentration" of pollutants in the intake water. This wording change is consistent with the similar NPDES permitting requirement for

direct dischargers (see 40 CFR 122.44(a)(2)(i)).

One commenter noted that EPA's use of the phrase "with no increase in the pollutant due to the regulated process" could create confusion in how to handle pollutants that are added in other facility wastestreams that are not regulated by the applicable categorical Pretreatment Standard. EPA agrees that the phrase "with no increase in the pollutant due to the regulated process" is not appropriate. Although the phrase was used in the preamble to the proposal and not the proposed regulation, EPA is revising the final regulatory language to include the phrase "without any increase in the pollutant due to the activities of the Industrial User". This phrase better reflects EPA's intent that the waiver would not be available for a pollutant where the Industrial User may add the pollutant through means other than the regulated industrial process (except for sanitary wastewater—see below).

Should Industrial Users have the authority to waive sampling requirements rather than the Control Authority? Several commenters suggested that it would be appropriate for the Industrial User to have the authority to make the determination on whether a pollutant is present and monitoring requirements should be waived rather than the Control Authority. EPA disagrees that Industrial Users rather than the Control Authority should have the authority to waive monitoring for pollutants not present. The Control Authority is the regulatory agency responsible for ensuring compliance with applicable Standards, and is therefore the most appropriate agency for determining the monitoring requirements necessary for it to fulfill that responsibility. In addition, placing the authority with the Industrial User eliminates oversight that, in EPA's view, is necessary to ensure that this provision is implemented correctly.

What information is necessary to determine if a pollutant is not present at a facility? EPA received many comments suggesting what type of data is needed in order to make an informed decision on whether a pollutant is neither present nor expected to be present. Commenters noted that information contained in control mechanism applications and baseline monitoring reports, as well as data obtained through a thorough facility inspection could all be used to support a determination that a pollutant is not present. The commenters noted that these are all mechanisms for obtaining data on the raw materials, products, and by-products used and generated at an Industrial User. EPA agrees that these are valid sources of information that can contribute to an Industrial User's demonstration that a pollutant is neither present nor expected to be present. EPA notes that the Industrial User monitoring waiver in today's rule applies to the semiannual monitoring required under 40 CFR 403.12(e), and does not apply to monitoring required for the baseline monitoring report or the 90-day compliance report. EPA has also concluded that if the Control Authority uses a control mechanism application form, such a form is an appropriate place for the Industrial User to request the monitoring waiver, although the mechanism for how the request is made is largely up to the discretion of the Control Authority.

Commenters also suggested that material safety data sheets would be a valuable tool in determining whether specific pollutants are present in the raw materials or other chemicals used at the facility. EPA notes that material safety data sheets do not identify all of the pollutants present in a given material, and therefore cannot be relied upon to determine whether a pollutant is present in the raw materials or other chemicals at the Industrial User's facility. In order for the Control Authority to accurately determine the presence of a pollutant in a given raw material or other chemical, the Industrial User will need to analyze the material in question, or obtain a certificate of analysis from the manufacturer of the material demonstrating the absence of the pollutant. In addition, the evaluation needs to include materials not necessarily used for the product, such as chemicals used in equipment cleaning and wastewater treatment. Although wastewater treatment chemicals are used to reduce the levels of pollutants in the Discharge, analysis of the chemicals can show significant levels of contaminants that can be added to the wastewater stream. Additional information, such as intermediate products, final products, and byproducts generated in the process will need to be considered as well, and therefore a detailed knowledge and evaluation of the process chemistry involved in the manufacturing operations will be necessary.

Some commenters suggested that the determination of whether a pollutant is present should be based exclusively on a review of available information. While available information should certainly be used in the determination, and EPA would expect that most Industrial Users requesting the waiver would have a fairly extensive knowledge of the pollutants present in their wastewater, because the pollutants are either directly added or generated as byproducts, an Industrial User cannot assume that a pollutant is not present in its Discharge simply because it has not generated any information to suggest otherwise. EPA notes that the Industrial User has the burden to demonstrate that the pollutant is not present, and if this demonstration cannot be made to the satisfaction of the Control Authority, the waiver may not be granted.

EPA does agree that the determination of whether a pollutant is present should be based on whether or not that pollutant would have the potential to enter the wastestream to the POTW. Such an evaluation must include the potential for the pollutants to enter the wastestream through spills and other potentially infrequent events, in addition to whether the pollutant would be routinely expected to enter the wastestream. Therefore, in order for monitoring for the pollutant to be waived, there must be a high degree of certainty that the pollutant will not show up in the Discharge to the POTW.

EPA also notes that for facilities that use the combined wastestream formula, "unregulated" wastestreams may be covered by the categorical Standard through the adjusted Standard. Therefore, EPA has concluded that it is not appropriate to allow a monitoring waiver where wastestreams other than those regulated by the categorical Standard contribute the pollutant of concern. However, since pollutants, especially metals, may be present in sanitary wastestreams at higher than background concentrations, and because sanitary wastestreams are not typically regulated through categorical Standards specifically or the Pretreatment program in general, the revised regulation provides that waivers may be granted where the only source of the increase in the pollutant from human activity is sanitary wastewater, provided that the sanitary wastewater is not regulated by an applicable categorical Standard and does not include the pollutant at levels that are significantly higher than typical domestic levels for the POTW's service area. See 40 CFR 403.12 (e)(2)(i).

One commenter noted several industries that claimed that a pollutant was not present in their Discharge, only to have it show up in monitoring results. EPA is aware of similar instances and knows of circumstances where the pollutants are later detected in the sampling data at fairly high levels. This is one of the reasons why EPA is requiring that the technical evaluation of the facility to determine the presence of the pollutant be

supported by sampling data, including data prior to treatment. Even though EPA is generally not requiring a minimum amount of data (with the exception of the one sample required prior to treatment), Control Authorities are expected to have sufficient sampling data to support the technical evaluation. Where monitoring data shows that the pollutant is present at levels above the background intake water level, the Control Authority must deny the request for the monitoring waiver.

How much sampling data is necessary to make a determination that a pollutant is not present? Comments on this issue varied from suggesting that no sampling is necessary to providing suggestions on specific sampling frequencies for the intake water as well as the effluent Discharge. One commenter suggested that no influent monitoring data was necessary if the effluent data shows no detectable levels of the pollutant. Although EPA has concluded that some sampling data is necessary to document the absence of a pollutant in the Discharge, the amount of sampling necessary for the determination is most appropriately determined on a site-specific basis, and will depend, in part, on how convincing are the arguments regarding the "other technical factors". Therefore, EPA is not establishing a minimum monitoring frequency. This is also consistent with the NPDES regulations, which do not establish a minimum sampling frequency. EPA is, however, establishing a minimum requirement that one sample be collected prior to treatment. Data prior to treatment is necessary to demonstrate that the measured levels reflect any pollutants that are added to the wastewater rather than the levels after they have been reduced by treatment, since effective treatment could become less effective over time. Other data that may be used in the evaluation include final effluent data and in many cases the facility intake water.

It is important to note that the pollutant monitoring waiver is based on a facility-wide evaluation and, therefore, sampling data must be representative of all wastestreams, as well as any seasonal or other variability in the Discharge. In addition, note that the monitoring waiver is for pollutants that are neither present nor expected to be present, and not for pollutants which are added but for which no violation of the applicable Standard is expected. In some cases, the existing monitoring data will be sufficient to evaluate the presence of the pollutant in the Discharge. The data prior to treatment is less likely to have been collected in the past, although historic data, if still representative, can be used.

EPA has concluded that a sequential approach to sampling is the most appropriate way to evaluate the request for a monitoring waiver based on sampling data. If monitoring of the Industrial User's wastewater prior to treatment (and after treatment where appropriate) shows no detectable levels of the pollutant based on the most sensitive EPA approved method, then no sampling of the intake water is necessary because the levels of the pollutant in the Discharge will already have been shown to be at or below the levels in the intake water. However, if a pollutant is present in the Industrial User's wastewater, data on the levels in the influent water are necessary to determine whether the presence of the pollutant is solely the result of levels in the influent water, or the result of the Industrial User adding the pollutant to some extent. Background levels of pollutants in an Industrial User's influent water will vary from POTW to POTW, and possibly from Industrial User to Industrial User based on many factors. If historical data is available, based on prior sampling by either the Industrial User or the POTW, or based on drinking water system data that is representative of the Industrial User's intake water, additional sampling may not be necessary.

EPA notes that data for intake water must be representative of the water typically used at the facility, but prior to any water treatment or conditioning provided by the Industrial User. This generally means that the data, especially for lead and copper, should reflect pollutant levels of intake water that have been running continuously for at least several minutes, rather than pollutant levels of intake water that have been sitting in the pipes for several hours. Water system data for lead and copper will typically reflect the levels of pollutants in the water after it has been sitting in the pipes for at least six hours. Because this data is not generally representative of the levels of lead and copper in the typical facility intake water, drinking water data for lead and copper may not be representative of the Industrial User's actual intake water and should not be used unless the Industrial User can demonstrate to the satisfaction of the Control Authority that the lead and copper levels are actually representative.

How should Control Authorities and Industrial Users address analytical variability when determining if a pollutant is present above background levels? One commenter requested clarification on how to handle a situation where the Industrial User and the Control Authority had determined that a pollutant was not present, but subsequently found slightly higher levels based on monitoring data. EPA acknowledges that there is some variability in sample results. Therefore, it is possible that slightly higher levels of pollutants may be measured in the Industrial User's wastewater than in the intake water. If the higher levels are within the method variability and the technical evaluation shows that the pollutant is neither present nor expected to be present, then the results should be considered equal. If the higher levels are above the method variability, then the pollutant should be considered to be present unless the Industrial User can demonstrate that the sample result was in error, or that the intake levels of the pollutant have risen to the same extent. EPA notes that the burden is on the Industrial User to demonstrate that an analytical error has occurred through re-analysis of the sample or other similar means. An unexpected result is not sufficient justification to consider a sample result to be in error since, as noted above, sampling data at times finds pollutants which were not expected to be present. Likewise, the Industrial User would need to provide sampling data demonstrating that the levels of the pollutant in question have risen in the intake water if it believes that this is the reason for the higher levels of the pollutant in its wastewater.

Should any ongoing POTW monitoring be required to demonstrate that the waived pollutant continues to be absent from the Discharge? Not all commenters agreed with the EPA proposal requiring POTW's to monitor for any waived pollutants at least once during the effective period of the Industrial User's control mechanism. These commenters believed that the combination of the certification and the requirement to report changes in the Discharge were sufficient to ensure that the Control Authority would become aware of changes that would require a resumption of monitoring. Other commenters believed that the once per control mechanism term was appropriate and would not burden POTWs, while other commenters believed that monitoring once per year for the waived pollutants was appropriate. EPA disagrees that annual monitoring will be necessary to determine whether or not the pollutant is present. As stated in the preamble of the proposal, EPA asserts that if the Control Authority has determined, based on both sampling data and a

technical evaluation, that a pollutant is not present at levels above background, and if the Industrial User continues to certify that there is no increase in the pollutant in its wastewater due to the activities of the Industrial User, then it is appropriate to allow the Control Authority to determine whether to sample the facility more frequently than once during the term of the control mechanism. EPA received no data to suggest that more frequent monitoring is necessary. EPA notes that the Control Authority has the discretion to determine that the Industrial User must monitor for a pollutant despite the User having demonstrated that it is not present. Where the Control Authority elects to require monitoring in such circumstances, it may determine the appropriate frequency of monitoring, including frequencies that are less than twice per year. In addition, the Industrial User may also monitor on its own, even though the requirement to do so has been waived, but in this case the Industrial User must report the results of that monitoring to the Control Authority in accordance with 40 CFR 403.12(g)(6).

Although EPA is not requiring annual monitoring by the POTW, EPA has concluded that at least one effluent sample during the term of the Industrial User's control mechanism is necessary to confirm that no changes have occurred, and that the monitoring waiver is still appropriate. EPA is requiring that this monitoring be done by the POTW to ensure an independent assessment of the Industrial User. EPA has concluded that the most appropriate time for the monitoring to occur is during the renewal of the control mechanism. However, EPA also asserts that the timing is best left to the discretion of the POTW and, therefore, is not requiring that the monitoring occur at any specific time during the duration of the control mechanism.

Should the waiver be available for pollutants that in the past have caused Pass Through or Interference, or otherwise caused problems at the POTW? One commenter suggested that the monitoring waiver for pollutants not present should not be available for pollutants which have been problematic for the POTW in the past. EPA agrees that POTWs must be more careful when waiving the monitoring requirements for pollutants for which the POTW has previously experienced problems. In these instances, more monitoring data and a more careful review of the technical evaluation is warranted. However, if the pollutant is truly not present at the facility or in the Discharge and there is no potential for spills or slug loads of the pollutant, EPA does not view it as necessary to require monitoring at that Industrial User's facility merely because the pollutant was associated with past POTW problems and, therefore, will not prohibit granting a waiver in these circumstances. Granting the waiver is at the discretion of the Control Authority, and where there has been a history of problems with a pollutant at the POTW, the Control Authority may deny a waiver, if it deems this necessary to prevent future problems.

Is the waiver available for facilities subject to the Organic Chemicals, Plastics, and Synthetic Fibers category? Most comments supported allowing waiver of the monitoring requirements for pollutants not present for facilities subject to the OCPSF Standards. EPA agrees that Control Authorities should be able to grant the monitoring waiver to OCPSF dischargers if appropriate. Several commenters indicated that they know of OCPSF facilities that manufacture a limited number of products and have fairly consistent Discharges. A monitoring waiver for some regulated pollutants may be appropriate for such facilities and, therefore, a blanket exclusion for all OCPSF facilities from the waiver would not be appropriate. However, EPA notes that production and Discharges from OCPSF facilities can be highly variable. Control Authorities must ensure that sufficient information, including sampling data, is available to assess whether a particular pollutant is present at any time, taking into consideration all of the variability in production. When a particular pollutant may be present at some time based on the products that are manufactured at the facility, even if the pollutant is not currently present, a monitoring waiver for that pollutant would not be appropriate. If any facility's operations, regardless of whether they are subject to OCPSF Standards or not, are sufficiently variable that a reasonable determination cannot be made as to whether a pollutant will consistently be absent from the Discharge, the Control Authority may not grant a waiver.

How does the waiver for pollutants neither present nor expected to be present affect other waivers specifically included in a categorical Pretreatment Standard, such as the option under the metal finishing Standards allowing for implementation of a toxic organics management plan in lieu of monitoring for total toxic organics? Several commenters compared the waiver of monitoring for pollutants not present being promulgated today to other monitoring waivers such as the management plan and certification option under the metal finishing Standards in lieu of total toxic organics monitoring. In order to avoid any potential confusion, EPA is adding specific language to today's regulations which states that the monitoring waiver and certification for a pollutant that is not present cannot be used in place of any certification process established in categorical Pretreatment Standards. Therefore, today's monitoring waiver would not be available, for example, for total toxic organics under the metal finishing regulations. Rather, in order to reduce its monitoring for total toxic organics, a metal finisher would need to use the management plan and certification process contained in 40 CFR 433.12. Since the metal finishing and other category-specific certifications were established for an identified set of facilities based on an evaluation of those facilities, while today's monitoring waiver is being established generally without a reevaluation of each categorical Pretreatment Standard, EPA has concluded that it is not appropriate for today's waiver to supercede these more specific certifications. EPA notes that the equivalent NPDES Permit requirement includes this same provision. See 40 CFR 122.44(a)(2)(v). However, while the general waiver for pollutants neither present nor expected to be present cannot substitute for a category-specific certification requirement, the data and analyses that would otherwise be used to support such a waiver may be relevant to, and if so form part of the basis for, the category-specific certification.

While today's rule provides that the monitoring waiver and certification for a pollutant that is not present cannot be used in place of any certification process already established in existing categorical Pretreatment Standards, the monitoring waiver is available for pollutants that are analyzed as surrogates for other pollutants.

What happens if a facility's operations change so that a pollutant for which a monitoring waiver has been granted is now present at the facility? Several commenters correctly noted that 40 CFR 403.12(j) requires that Industrial Users provide notification of any substantial changes in the volume or character of pollutants in the Discharge. This notification requirement would apply in the event that a pollutant for which monitoring was waived became present at the Industrial User for any reason. However, the language in 40 CFR 403.12(j) refers to pollutants in the Industrial User's Discharge rather than any pollutant at the facility which is or may be added to the wastestream.

Therefore, in order to clarify the requirement for waived pollutants, EPA has added language to the final regulation that states that notification is necessary, and that the Industrial User must immediately resume monitoring, if the pollutant is found or suspected to be present. The requirement to resume monitoring would apply even before the Industrial User's control mechanism is revised to reflect the resumed monitoring. Control mechanisms that include the monitoring waiver must also include language requiring notification and the resumption of monitoring in the event that a pollutant is subsequently determined to be present at the facility. Failure to provide the required notification or to resume monitoring is a violation of the Industrial User's control mechanism and the General Pretreatment Regulations. EPA also recommends that any control mechanism issued incorporating a monitoring waiver includes a reopener clause which allows the Control Authority to revise or revoke the waiver if appropriate.

Where a facility has been granted a waiver of monitoring for a pollutant that has been determined not to be present and it installs or constructs new production lines or processes, the Industrial User must evaluate the new production lines or processes and determine whether they may cause the pollutant to be present, in which case the facility must resume monitoring.

How often will certification that the pollutant is not present in the Discharge be required? EPA proposed that certification that a pollutant is not present at the facility be submitted twice-per-year with the semiannual reports otherwise required under 40 CFR 403.12(e). Several commenters supported this approach, while others believed that a once-per-year certification would be sufficient, or that no certification should be required, especially since the Industrial User is required to report changes at the facility to the POTW. EPA has concluded that twice-per-year certification will not impose a significantly greater burden on Industrial Users than once-per-year certification since in most cases the reports would still be submitted at least twice-per-year even if monitoring for some pollutants is waived. In addition, it often may be easier for the Industrial User to include the certification with every report rather than determining which reports need the certification and which do not. Although required to report changes in the facility, an Industrial User's willingness to certify that the pollutant is not present in the Discharge provides an additional assurance that the pollutant is not present above background levels. Accordingly, EPA has decided to maintain the twice-per-year certification requirement.

In addition, EPA has clarified the language of the certification requirement to state that once an Industrial User has received a monitoring waiver, the certification is required and is not optional. If the Industrial User is no longer certain that the pollutant is not present, it must notify the Control Authority and immediately begin monitoring. EPA intends that the monitoring waiver be used in instances where a pollutant is consistently not present at a facility, and is not to be used for short periods of time when the pollutant is not present.

It should be noted that the certification provided in the 40 CFR 403.12(e)(2)(v) includes two blank spaces which are to be filled in by the Industrial User. In the first blank space, the Industrial User is to specify the applicable Pretreatment Standard(s) that apply to the facility (e.g., 40 CFR 433.15). In the second blank space, the Industrial User is to list the pollutants for which the monitoring waiver has been granted. As noted above, the certification must include all of the pollutants for which a monitoring waiver has been granted. The Control Authority may also fill in the blank spaces before incorporating the certification language into the Industrial User's control mechanism for use by the Industrial User with the semiannual or more frequent reports.

Should the waiver be available for new Industrial Users, or during an Industrial User's first control mechanism? EPA noted in the preamble to the proposed rule that the equivalent NPDES provision did not allow the monitoring waiver to be granted to New Sources/New Dischargers for the term of their first NPDES Permit. Comments on this issue were divided, with some commenters noting that the term of the first control mechanism is a good time to collect data on the presence of the pollutant at the facility, while other commenters believed that the Control Authority would generally be able to determine the presence of the pollutant, even for the first control mechanism. It is EPA's view that the Control Authority may need time to collect enough data to appropriately assess whether pollutants at a new Industrial User are consistently not present and, therefore, should be cautious in approving a waiver for new Industrial Users. Time may be necessary to determine whether there are seasonal or other variations in the operations that would result in the pollutants being present periodically. However, the length of time needed to collect the data and make the assessment will vary depending on site-specific factors. Therefore, EPA has not included language in the regulation restricting the eligibility of a new Industrial User for a monitoring waiver for pollutants that are not present.

What documentation of the waiver is required? Several commenters noted the need to document the waiver when it is approved by the Control Authority. EPA agrees that this documentation is important for the Approval Authority and the general public to ensure that waivers are properly granted. Pursuant to 40 CFR 403.14, this information must be made publicly available. It has always been EPA's intent that any monitoring waivers would be documented in the Industrial User's control mechanism. Today's regulation also specifically requires that the Control Authority's rationale for granting the waiver and any information submitted by the Industrial User in its request for a monitoring waiver be maintained by the Control Authority for at least three years after the expiration of the waiver.

B. General Control Mechanisms (40 CFR 403.8(f)(1)(iii))

Today's final rule clarifies that POTWs may use general control mechanisms, such as general permits, to regulate the activities of groups of Significant Industrial Users (SIUs). Provided that the necessary legal authority exists, the POTW may use a general control mechanism for any facilities that meet certain minimum criteria for being considered substantially similar.

In the NPDES permitting context, the use of general permits (see 40 CFR 122.28) allows the permitting authority to allocate resources in a more efficient manner and to provide timelier permit coverage. For example, direct dischargers with common characteristics may be covered under a general permit without the permitting authority expending time and money to issue individual permits to each of these facilities. The use of a general permit also ensures consistency of permit conditions for similar facilities. In the Pretreatment context, POTWs might benefit from the use of control mechanisms for Discharges from SIUs to POTWs which are similar to the general permits used in the NPDES program.

This modification should help POTWs by providing a cost-effective method to cover large numbers of similar facilities under a single mechanism. This is expected to reduce

the administrative burden of issuing separate mechanisms to similar facilities.

1. What were the rules in place prior to today's rulemaking?

Prior to today's rulemaking, the Pretreatment Regulations allowed POTWs to use general control mechanisms to control non-Significant Industrial Users, but required individual control mechanisms for SIUs. Section 403.8(f)(1)(iii) required POTWs to "Control through, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance. * * * In the case of Industrial Users identified as significant * * *, this control shall be achieved through s or equivalent individual control mechanisms issued to each such User." The preamble to the regulation which originally required control mechanisms for SIUs emphasized the importance of POTWs evaluating SIUs on an individual basis to determine the need for individual requirements as necessary. See 55 FR 30082 (July 24, 1990).

2. What changes did EPA propose?

EPA proposed to revise the regulation by authorizing POTWs to use "general permits" to regulate SIUs in certain circumstances. Under the proposal, all of the facilities to be covered by a general permit must employ the same or substantially similar types of industrial processes; discharge the same types of wastes; require the same effluent limitations; and require the same or similar monitoring. These requirements reflect the existing criteria for using general permits for direct dischargers at 40 CFR 122.28(a)(2)(i). EPA also indicated that the use of a general permit does not relieve the SIU from any reporting or compliance obligations under Part 403.

3. What changes is EPA finalizing in today's rule?

In today's rule, EPA is finalizing the proposed rule's change to allow the use of general control mechanisms for SIUs. Section 403.8(f)(1)(iii) contains the revisions which authorize general control mechanisms.

EPA notes that today's rule replaces the term "general permit" with "general control mechanism". This terminology is more consistent with the existing Pretreatment Regulations which require that SIUs be controlled through "permits or equivalent individual control mechanisms." Just as EPA has not precluded the use of an "order or similar means" to regulate individual SIUs, it also is not ruling out the use of other mechanisms besides permits to address groupings of SIUs. This decision is based on the rationale EPA provided when the Agency first promulgated the requirement that POTWs regulate SIUs through individual control mechanisms to SIUs. See 55 FR 30107, July 24, 1990. EPA is including the relevant passage from this final rule for reference:

"* * * the Agency will require issuance of "individual Discharge permits or equivalent control mechanisms." An adequate equivalent control mechanism is one which ensures the same degree of specificity and control as a permit. To clarify that the conditions of the individual control mechanism must be enforceable against the Significant Industrial User through the usual remedies for noncompliance (set forth in 40 CFR 403.8(f)(1)(vi)(A), EPA has amended the language of 40 CFR 403.8(f)(1)(vi)(B) to provide that Pretreatment requirements enforced through the remedies of 40 CFR 403.8(f)(1)(vi)(A) shall include the requirements set forth in individual control mechanisms. In addition, the Agency has added to proposed 40 CFR 403.8(f)(1)(iii) a statement that individual control mechanisms must be enforceable.

What types of facilities may be subject to a general control mechanism? SIUs that are covered by concentration-based Standards and Best Management Practices may be subject to general control mechanisms. However, due to the requirement that all facilities covered under the same mechanism "require the same effluent limitations", facilities regulated by categorical Standards expressed as mass limits, which are inherently unique to each individual User, can not receive coverage under a general control mechanism. The one exception to this exclusion would be situations where the POTW has imposed the same mass-based local limit on a number of facilities, and any categorical Standards are expressed as concentration limits or BMPs. In addition, general control mechanisms are not available for Industrial Users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations, or other calculated categorical Pretreatment Standard equivalents (40 CFR 403.6(e) and 40 CFR 403.15).

How does an SIU apply for coverage under a general control mechanism? For an individual SIU to be covered by a general control mechanism, it must file a "written request for coverage" with the POTW. Through the request for coverage, the Industrial User should identify its production processes, the types of waste generated, and the monitoring location or locations at which all regulated wastewaters will be monitored. The request for coverage should also include a finding that the SIU properly falls within the category of facilities covered by the general control mechanism. In addition, the SIU's request for coverage should include an indication of whether the User is requesting a monitoring waiver for pollutants not present.

The POTW does not necessarily need to establish an entirely new application process for SIUs seeking coverage under a general control mechanism. Existing procedures or forms may be used to provide coverage. The POTW may find that it is necessary to supplement existing procedures or forms to add the information EPA recommends for inclusion in the requests for coverage, as discussed in the preceding paragraph.

How does the POTW adopt general control mechanisms? A POTW must have the necessary legal authority if it wants to issue general control mechanisms. Legal authority changes would include the adoption of ordinance language consistent with today's changes to 40 CFR 403.8(f)(1)(iii) and the development of any policies or procedures that would support the issuance and implementation of general control mechanisms. Refer to Section VI for a more detailed discussion of Program modifications.

In addition, general control mechanisms have to be enforceable to the same extent as an individual control mechanism. The POTW should also have enforcement authority to take action against Industrial Users that fail to file the required request for a general control mechanism, i.e., an IU that fails to file is subject to enforcement for discharging without authorization.

The POTW should develop the general control mechanism and provide notice that it is available. The general control mechanism should, of course, specify exactly what characteristics or conditions make an Industrial User eligible for coverage. The general control mechanism must also impose all of the conditions of individual control mechanisms listed in 40 CFR 403.8(f)(1)(iii)(B)(*1*)–(*6*).

A POTW may make coverage by the general control mechanism mandatory or optional. In either case, if an Industrial User is to be covered by the general control mechanism, it must file the written request for coverage to be covered by the general control mechanism. The POTW should consider how it will notify SIUs, subsequent to their filing a written request for coverage, that they are authorized to discharge under the general control mechanism, including how it will memorialize certain facility-specific factors such as sampling location. EPA

notes that the POTW's annual report should indicate which SIUs are covered by each general permit.

Today's final rule does not preclude POTWs from requiring individual control mechanisms for specific Industrial Users, even if they might otherwise satisfy the conditions for a general control mechanism, where necessary or otherwise determined to be appropriate by the POTW. Today's final rule also does not restrict POTWs' existing authority to use general control mechanisms to regulate facilities that are not considered Significant Industrial Users.

What significant changes were made to the proposed rule?

Today's rule makes the following changes to the proposed rule:

Criteria for Coverage: In proposing the criteria for coverage under a general control mechanism, EPA omitted one of the criterion used in the NPDES general permit requirements. In today's final rule, EPA is adding this criterion, which is similar to 40 CFR 122.28(a)(2)(i)(E), to the list of criteria for coverage. The following language is included in 40 CFR 403.8(f)(1)(A)(5): "in the opinion of the POTW, [the SIUs] are more appropriately controlled under a general control mechanism than under individual control mechanisms."

Request for Coverage: EPA has deleted all references to the requirement to submit a "Notice of Intent" (NOI) to be covered under a general control mechanism. The NOI is an instrument that is applicable to the NPDES general permit program. Although the proposal indicated that an alternative instrument could be used by the POTW, EPA has concluded that the "written request for coverage" better reflects the Agency's intention not to restrict the POTW's decision about the type of application it chooses to use in covering SIUs with a general control mechanism.

Coverage for SIUs with Monitoring Waivers for Pollutants Not Present: EPA makes coverage under a general control mechanism available for SIUs which are requesting monitoring waivers for pollutants neither present nor expected to be present. The proposal did not state whether such facilities could still meet the required criteria for being considered substantially similar. EPA also specifies that the monitoring waiver is effective in the general control mechanism only after the SIU obtains written approval from the POTW that the monitoring waiver request has been approved.

Coverage for SIUs with Mass Limits: The proposed rule excluded all facilities subject to mass limits from coverage under a general control mechanism. Today's final rule provides one exception to that exclusion. EPA clarifies in 40 CFR 403.8(f)(1)(iii)(A) that general control mechanisms are unavailable for facilities subject to categorical Standards expressed as mass of pollutant discharged. This language does not prevent a POTW from using a general control mechanism for a group of SIUs that all have the same mass-based local limits (as distinguished from mass-based categorical Standards), as long as the SIUs are not subject to categorical Standards that are mass-based. In addition, the final rule also clarifies that the mass-based categorical Standards excluded from coverage under a general control mechanism includes those limits that are expressed as mass of pollutant discharged per day or that are production-based.

Recordkeeping Requirements: EPA is adding a requirement for the POTW to maintain for three years after the expiration of the general control mechanism, a copy of the general control mechanism itself, documentation to support the POTW's determination that the group of SIUs to be covered meets the required criteria, and copies of all related requests for coverage. This documentation will serve as a record for the POTW to support its actions in establishing the facility category and for authorizing coverage under the general control mechanism for individual facilities.

4. Summary of Major Comments and EPA Response

Is use of a general control mechanism in conflict with EPA's original intent in requiring individualized control mechanisms for SIUs? One commenter expressed concern that using general control mechanisms would not provide the specificity of control over SIUs that the Domestic Sewage Exclusion (DSE) study (Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works—EPA 530–SW–86–004) indicated was necessary. Today's rule provides an exception to the requirement that the POTW issue SIUs "permits or equivalent individual control mechanisms". The commenter is correct in observing that the adoption of the requirement to issue control mechanisms to SIUs after EPA's issuance of the DSE study in 1986, was intended to provide a mechanism for the POTW to impose individualized Pretreatment requirements on SIUs. See 55 FR 30105–30110 (July 24, 1990). However, EPA has now concluded that general control mechanisms can provide an equivalent level of control for facilities that meet all of the requirements in 40 CFR 403.8(f)(1)(iii)(1–6), and will not lessen the POTW's enforcement capabilities.

Use of a general control mechanism does not relieve the POTW of any of its oversight or implementation requirements under its Pretreatment program. The purpose of the general control mechanism is to streamline the administrative requirements associated with issuing control mechanisms to multiple Industrial Users that are substantially similar. The level of control over an SIU with a general control mechanism should not be any different than if that User were covered by an individual control mechanism. Both individual and general control mechanisms must be enforceable and must contain the minimum conditions provided in 40 CFR 403.8(f)(1)(iii)(B)(1–6). In addition, EPA notes that it is within the POTW's discretion to exclude particular Industrial Users from general control mechanisms in order to treat those dischargers with more individually tailored requirements. EPA's intent is to leave these case-by-case determinations to the POTW, which should be in the best position to determine whether it is appropriate to use a general control mechanism for a particular User.

Is a Notice of Intent (NOI) required for an SIU requesting coverage under a general control mechanism? Several commenters found EPA's use of the term "Notice of Intent" (NOI) problematic because it suggested that POTWs would be required to use such an instrument. These commenters requested that EPA delete the reference to NOI or make it clear that the POTW can choose the appropriate mechanism for SIUs to use in seeking coverage under a general control mechanism. EPA acknowledges these concerns, and has removed the reference to "notice of intent" in today's final rule. The revised rule instead refers only to a "written request for coverage." The decision regarding the type of application to use for general control mechanisms is entirely the POTW's. EPA emphasizes, however, that regardless of the type of instrument chosen, the request for coverage must identify, at a minimum, the information required under new 40 CFR 403.8(f)(1)(iii)(A). POTWs must also request basic contact information (e.g., contact name, address, phone number, etc.) and specification of the general control mechanism category for which the SIU is seeking coverage. See 40 CFR 403.8(f)(1)(iii)(A). The POTW will need to obtain sufficient information to verify that the User is appropriately classified under the general control mechanism, such as

information to determine the applicability of categorical Standards.

Should there be additional criteria for a User to be eligible for coverage under a general control mechanism? One commenter requested that EPA include additional criteria for determining whether a group of Users are substantially similar enough to merit use of a general control mechanism. The criteria included in the proposal (e.g., that facilities to be covered involve the same or substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations, and require the same or similar monitoring) are taken from the criteria used for general permits for direct dischargers in 40 CFR 122.28(a)(2)(i). The direct Discharge criteria contain one additional limitation, not included in the proposal, requiring the NPDES permitting authority to document that, in his or her opinion, the dischargers "are more appropriately controlled under a general permit than under individual permits." See 40 CFR 122.28(a)(2)(i)(E). In consideration of the commenter's request, and to be consistent with the criteria used for grouping direct dischargers within general permits, EPA has modified the proposed list of criteria to include a similar requirement that the POTW document why it believes that its SIUs are more appropriately regulated by a general control mechanism. EPA does not expect that this added criterion will impose additional burden on the POTW. This criterion merely requires that the POTW provide some written record of why it believes a particular grouping of SIUs is substantially similar, using the criteria in 40 CFR 403.8(f)(1)(iii)(A)(1–5).

Another commenter suggested that an SIU's compliance record should be used as an additional criterion for determining whether to allow general control mechanism coverage for a facility. EPA agrees that there will be factors, outside of the criteria in 40 CFR 403.8(f)(1)(iii)(A), which may support a POTW's decision to exclude a particular Industrial User from general control mechanism coverage. EPA also agrees that the need to impose a compliance schedule or enforcement order on a particular Industrial User is a good example of an additional criterion that the POTW may use to exclude an SIU from general control mechanism coverage. EPA notes that the criteria listed in 40 CFR 403.8(f)(1)(iii)(A) are minimum requirements. The POTW may include additional criteria if it chooses. However, EPA is reluctant to add additional criteria at this time, as the Agency has concluded that many of these factors will be site-specific and are best left to the POTW to judge whether they are appropriate for use in their program.

One commenter suggested that general control mechanisms not be available for SIUs that have multiple sampling locations, are subject to more than one categorical Standard, or have both federal categorical and non-categorical wastestreams. EPA agrees that situations such as this make it difficult to use a general control mechanism in some cases. However, EPA declines to adopt the additional criteria suggested by the commenter. The minimum required criteria in 40 CFR 403.8(f)(1)(iii)(A) provide some flexibility regarding the availability of coverage for any particular User. EPA prefers to leave to the POTW the site-specific judgments as to whether a class of dischargers meets the substantially similar criteria. The POTW may determine that a User which has multiple sampling points or which is subject to both categorical Standards and non-categorical requirements is sufficiently dissimilar from other Users to justify precluding that discharger from general control mechanism coverage. There may be some instances where these differences may still be accommodated under a general control mechanism, and therefore EPA has concluded that eliminating this flexibility is inappropriate.

Additionally, a general control mechanism may still be used to cover a class of Users subject to more than one categorical Standard as long as they are covered by the same Standards, in addition to meeting all other criteria for coverage. This is consistent with the requirement that all Users share the same effluent limits. See 40 CFR 403.8(f)(1)(iii)(A)(*3*). However, EPA expects that where there is one User in the class which is subject to at least one different categorical Standard than the others, even if it has one or more categorical Standards in common with the other Users, such a User would be unable to obtain coverage under a general control mechanism covering the other Users due to the differences in effluent limits.

Must the SIUs be exactly the same to be covered under a general control mechanism? Several commenters questioned EPA's intentions behind requiring that facilities meet the "substantially similar" criteria in order to qualify for use of a general control mechanism. Some of these commenters were concerned that the criteria would be interpreted too restrictively, and that industries would essentially have to be identical to be included in a general control mechanism group. One commenter believed that industries which are similar in many respects, but which are different in terms of operations and wastewater Discharges, should not be excluded from coverage.

EPA's view is that the criteria for inclusion in a general control mechanism category are appropriate as stated. The opportunity to develop and issue the same control mechanism for multiple SIUs comes with the tradeoff that these industries share certain minimum characteristics. In response to the commenter's observation that general control mechanisms should be available for industries which are similar in many respects, but different in terms of operations and wastes discharged, EPA agrees and notes that the criteria require that the operations be "the same or substantially similar" and the Discharge be of "the same types of wastes." EPA does not intend for these criteria to be interpreted as requiring the operations and wastes discharged to be exactly the same; rather, the intent is that industries covered under the same control mechanism be substantially similar.

EPA acknowledges that industries are rarely the same in every respect. In order for an SIU to be included in a general control mechanism category, it must meet the criteria in 40 CFR 403.8(f)(1)(iii)(A). With the exception of the SIU's effluent limits, which must be the same as other SIUs in the general control mechanism category, EPA does not expect each SIU in a general control mechanism category to be identical.

Can a general control mechanism be used for facilities which obtain a monitoring waiver for pollutants neither present nor expected to be present? One commenter recommended that general control mechanisms not be made available for SIUs which receive a monitoring waiver for pollutants neither present nor expected to be present at the facility. The commenter reasoned that such facilities require individual control mechanisms due to the variation in sampling requirements from other facilities. EPA disagrees with the commenter. Categorical Industrial Users (CIUs) that qualify for a sampling waiver for pollutants neither present nor expected to be present can still be accommodated under a general control mechanism even if other Users in the same general control mechanism category are still required to sample for all pollutants. There is flexibility inherent in the criterion requiring all industries covered by a general control mechanism to be subject to the "same or similar monitoring". If a particular CIU

is similar in every other respect to other CIUs, except for a sampling waiver for pollutants neither present nor expected to be present, it is EPA's view that a general control mechanism may still be used to cover this discharger. However, a POTW could choose as a matter of its own discretion to exclude CIUs with sampling waivers from coverage under the general control mechanism.

To assist the POTW in coordinating the implementation of general control mechanisms and processing requests for monitoring waivers, EPA is requiring Users to include in their requests for general control mechanism coverage any sampling waiver requests. Such a requirement will ensure that the POTW is able to process both the sampling waiver request and the general control mechanism application simultaneously, and provide the POTW with sufficient opportunity to determine what type of control mechanism is most appropriate. Where the POTW chooses to still cover those CIUs which receive monitoring waivers under a general control mechanism, 40 CFR 403.8(f)(1)(iii)(A) specifies that the monitoring waiver is effective only after the POTW has specifically notified the affected CIUs. Also, because all control mechanisms must include SIU self-monitoring requirements, unless all of the monitoring requirements and waivers for all pollutants are the same, the POTW will need to establish a common set of monitoring requirements in a general control mechanism and determine what mechanism it will use to incorporate site-specific monitoring waivers into a general control mechanism. Some possible mechanisms for addressing facility-specific monitoring waivers include issuing a separate monitoring supplement to the general control mechanism for individual CIUs, using the waiver approval notice as a site-specific modification to the general control mechanism, or appending the general control mechanism with specific monitoring waivers. See Section III.A. for discussion of requirements associated with monitoring waivers.

Can an SIU opt out of an existing general control mechanism? Several commenters expressed opinions on one side or the other in terms of whether general control mechanisms can be made mandatory or optional by the POTW. Industrial facilities generally commented that EPA should prevent POTWs from making general control mechanisms mandatory, while POTW commenters supported keeping this decision a matter of the local program's discretion. EPA is sensitive to the concerns regarding the need for flexibility on the type of control mechanism used for individual SIUs. The industry commenters argue that the SIU should be able to choose whether it wants to be covered by an individual or general control mechanism. EPA does not specify in today's rule whether the use of general control mechanisms should be optional or mandatory. However, provided that the SIUs in a category meet the required criteria, the POTW has the discretion to determine whether coverage under the general control mechanism is required or whether the Industrial User will have the option of being covered under an individual control mechanism. EPA emphasizes that there should be minimal if any difference between an individual and general control mechanism since the POTW is required to include in a general control mechanism all of the conditions of individual control mechanism listed in 40 CFR 403.8(f)(1)(iii)(B)(*1*)–(*6*). Even if the POTW chooses to make general control mechanism coverage mandatory, the SIU may be able to demonstrate to the POTW that it does not meet one of the criteria and therefore should be issued an individual control mechanism.

C. Best Management Practices (40 CFR 403.5, 403.8(f) and 403.12(b), (e), and (h))

Today's final rule clarifies that Best Management Practices (BMPs) may be used in lieu of numeric local limits. EPA also clarifies the reporting requirements that apply when BMPs are used as Pretreatment Standards.

1. What are the existing rules?

What are Best Management Practices?

Best Management Practices (BMPs) are management and operational procedures that are intended to prevent pollutants from entering a facility's wastestream or from reaching a Discharge point. BMPs are distinguished from numeric effluent limits that regulate the pollutants once they enter a wastestream. Although the General Pretreatment Regulations have not previously defined BMPs, the NPDES regulations at 40 CFR 122.2 define BMPs as schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce pollution. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

There are two different circumstances in which BMPs may be Pretreatment Standards. The first is when a POTW establishes BMPs as local limits to implement the general and specific prohibitions. The second is when the BMPs are categorical Pretreatment Standards established by EPA.

What regulations address the use of BMPs as local limits?

Prior to today's rule, the Pretreatment Regulations did not specifically address the use of BMPs as local limits. Thus, 40 CFR 403.5(c) required POTWs to develop "specific limits" and "specific effluent limits", without defining the term "limits." (emphasis added)

The Local Limits Development Guidance (EPA 833–R–04–002A, July 2004) includes a discussion in support of BMPs as local limits, and provides references and case studies to illustrate situations where BMPs have been utilized. EPA indicates also that the development and implementation of numeric local limits is not always the only appropriate or practical method for preventing pollutant Pass Through and Interference, or for protecting POTW worker health and safety. For instance, control of chemical spills and Slug Discharges to the POTW through formal chemical or waste management plans can go a long way toward preventing problems. A local requirement for an Industrial User to develop and submit such a plan can be considered as a type of narrative local limit and can be a useful supplement to numeric limits.

What regulations address the use of BMPs as categorical Standards?

Certain categorical Pretreatment Standards allow the use of BMPs as an alternative means of complying with, or in place of the established numeric effluent limit. For example, facilities may develop toxic organic management plans in lieu of sampling to demonstrate compliance with the total toxic organic limit in 40 CFR Part 433 (Metal Finishing category). The Pesticides Formulating, Packaging, and Repackaging (PFPR) regulation provides a pollution prevention alternative as an option that may be chosen rather than complying with the "zero discharge" limitations. See 40 CFR Part 455 (61 FR 57518, November 6, 1996).

Although the PFPR and some other categorical Standard regulations have provided for reporting compliance data related to BMPs, the Part 403 Pretreatment Regulations did not. See 40 CFR 403.12(b), (d), and (e). Those requirements focused on sampling data to demonstrate compliance with numeric limits rather than

documentation to determine compliance with a BMP.

2. What changes did EPA propose?

EPA proposed to clarify the regulations to provide specifically that BMPs developed by POTWs may serve as local limits required by 40 CFR 403.5(c)(3). The BMPs would be enforceable under 40 CFR 403.5(d). They would be included as local control mechanism requirements under 40 CFR 403.8(f)(1)(iii)(C).

EPA also proposed to modify 40 CFR 403.12(b), (e), and (h) to clarify the reporting requirements that apply when BMPs are used as Pretreatment Standards. This would include any documentation required by the Control Authority or the Standards themselves to demonstrate compliance with BMPs that are included in categorical Standards, as well as any documentation required by the Control Authority to demonstrate compliance with BMPs that serve as local limits. EPA also proposed a change to the definition of significant noncompliance (SNC) to facilitate POTW oversight of these practices. The proposal would broaden the SNC definition at 40 CFR 403.8(f)(2)(vii)(C) to include non-numeric violations such as BMPs. In addition, EPA proposed to revise the reference to "pretreatment effluent limit", and replace it with the more inclusive reference to "Pretreatment Standard or Requirement".

3. What changes is EPA adopting today?

Today's rule adopts the proposed rule changes to the Pretreatment Regulations relating to the use of BMPs as local limits, and the reporting requirements when BMPs are used as national categorical Standards.

What significant changes were made to the proposed rule?

The only significant change made to the proposed rule was the inclusion in 40 CFR 403.3(e) of a definition of BMPs consistent with the NPDES definition.

4. Summary of Major Comments and EPA Response

Does the CWA authorize POTWs to require implementation of BMPs as local limits? A few commenters questioned the authority under the CWA for POTWs unilaterally to require Industrial Users to implement BMPs instead of or in addition to numeric local limits. POTW authority to establish limits and other controls on Discharge derives from state law, not the CWA. The Act, together with the Pretreatment Regulations, specifies authorities that POTWs must have, and establishes the conditions under which local requirements become federally enforceable. There is nothing under the Act that would preclude POTWs from setting BMP-based limits, or EPA from making such limits established by a POTW federally enforceable.

How are BMPs defined? Several commenters felt that the use of the NPDES definition of BMPs would be appropriate in the Pretreatment context. EPA agrees that such a definition would be useful, and is adopting the NPDES definition, modified slightly to reference relevant Pretreatment Standards.

Is a regulatory change needed for BMPs developed by POTWs to be considered enforceable local limits? Some commenters expressed the view that BMPs could already serve as enforceable local limits, and that a regulatory change was unnecessary. As discussed in the preamble to the proposal, the existing regulations do not specifically address this issue, although EPA has supported their use in its local limits guidance. EPA has concluded that revision of the regulations is necessary to clear up any questions on this issue. As will be discussed below, by providing this clarification EPA is ensuring that POTWs have additional means at their disposal as they seek to control pollutants and sources not amenable to more traditional numeric limits.

Will POTWs be limited in their ability to develop BMPs as local limits? Some commenters recommended that the POTW's ability to use BMPs as local limits be limited to certain situations, such as where it is impracticable to obtain representative sampling data from a type of discharger, the Discharge flow is minimal or variable, or where operations or processes of a type of discharger are similar enough that effective BMPs can be established. In general, EPA anticipates that POTWs will choose to use BMPs instead of numeric local limits where determination of compliance with numeric limits is infeasible, or as a supplement to numeric limits as appropriate to meet the requirements of the CWA. As the commenters pointed out, BMPs may be appropriate for regulating releases when the types of pollutants vary greatly over time, when chemical analyses are impracticable, and when other Discharge control options are inappropriate. It may also be appropriate for IUs to be required to comply with both BMPs and numeric limits. While use of BMPs is not appropriate in all situations, their use, either in conjunction with or instead of numeric limits, will be at the discretion of the POTW, with oversight by EPA and the state Approval Authority.

What are some specific situations where BMPs would be appropriate? Numerous commenters representing POTWs, Industrial Users and trade associations provided specific examples where BMPs would be well-suited to address certain types of industrial or commercial Discharges, either in lieu of or in addition to numeric local limits. Examples involving requirements for photoprocessors to use silver recovery systems and/or management practices were frequently cited to address silver Discharges from large numbers of commercial facilities. Also cited were requirements for dental facilities to follow BMPs to control mercury Discharges from dental amalgam where individual monitoring on a large scale is impractical and where Discharges are episodic in nature. Similarly, other commenters referred to use of shop towel management and other BMPs to address Discharges from printing facilities, or setting requirements for "no Discharge" of tetrachloroethene from dry cleaning facilities as an alternative to complying with a numeric limit. The Agency agrees that these are good examples of situations where BMPs may be appropriate.

BMPs may also be used to supplement categorical Standards or numeric local limits at larger facilities. One commenter described the use of chemical management plans to address specific pollutants in individual IU Permits. These plans, which were required by the POTW, require IUs to identify within 60 days of Permit issuance all sources of a given pollutant within the plant site; specify actions to be taken to control these identified sources; provide a schedule for implementing the plan; and identify individuals responsible for implementation of the plan. Upon approval by the POTW, the chemical management plan is incorporated into the IU's Permit as an enforceable requirement.

Who decides whether a POTW will require an IU to comply with a BMP or numeric limit? Some industries and trade associations asked EPA to ensure that IUs have the option of whether to meet BMPs or numeric limits. While POTWs are encouraged to work with affected Users in developing local limits, and must comply with applicable public participation requirements, the POTW is responsible for developing, implementing and enforcing local limits as it deems appropriate to meet its program requirements. As discussed above, whether BMPs are used in conjunction with or instead of numeric

limits will be at the discretion of the POTW, upon approval by the Approval Authority.

How are BMPs factored into the technical evaluation of local limits? The preamble to the proposed rule stated that for BMPs to be considered local limits under 40 CFR 403.5(c), the practices must protect against Pass Through and/or Interference. This will require the POTW to evaluate the BMPs during the technical evaluation of its local limits. Some commenters raised questions regarding whether a POTW would need to quantify the effects of a BMP in its calculation of its maximum allowable industrial loading (MAIL), and if so, how that should be done.

As discussed in the preamble to the proposal, BMPs are expected to be used where calculation of numeric effluent limitations is not feasible, such as when the types of pollutants vary over time or when chemical analyses are inappropriate. Nevertheless, a POTW needs to assign an allocation of pollutants to Users covered by the BMP either in its calculation of Maximum Allowable Industrial Loadings (MAIL), or in calculation of separate allowable loadings for commercial facilities. For instance, a POTW could estimate the loading of a pollutant from a given sector prior to imposition of BMPs by multiplying the average loading per User by the number of facilities. Expected loading reductions from required BMPs could then be estimated and incorporated into the MAIL. Thus, the POTW should be able to provide an evaluation that implementation of the numeric limit plus implementation of BMPs for specific sectors will result in the calculated Maximum Allowable Headworks Loading (MAHL) being met. Where it is expected to take a significant amount of time for BMP-based reductions to be realized, the Apre-BMP" loading from the sector should be used in the MAIL calculations. Initial estimates of loading reductions could then be verified through sampling of selected Users that have implemented the BMPs or evaluating influent loadings for pollutants being addressed by BMPs to see if adjustments are needed for the allowable headworks loadings, the numeric limits or BMPs for any affected sectors.

May States and EPA Regions establish BMPs as local limits? One commenter observed that the language in 40 CFR 403.5(c)(4), allowing POTWs to develop BMPs as local limits, would not pertain to states that administer authorized Pretreatment programs. The commenter supported broadening this language to allow authorized states and Regions, acting in their capacity as Control Authorities, to develop and enforce BMPs. Section 40 CFR 403.5(d), states that "where specific prohibitions or limits on pollutants (i.e., local limits) are developed by a POTW in accordance with (40 CFR 403.5(c)), such limits shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act."

An authorized state which does not approve POTW programs but assumes local responsibility by acting as the Control Authority under 40 CFR 403.10(e) is required to implement all elements of the Pretreatment program established for POTWs in 40 CFR 403.8(f), including the establishment of local limits (40 CFR 403.8(f)(4)). Local numeric limits or BMPs established in this situation would be federally enforceable Pretreatment Standards under 40 CFR 403.5(d) provided such limits are authorized by state law.

An authorized state acting as the Approval Authority, and as Control Authority for Industrial Users which discharge to a POTW without an approved program, may develop and implement BMPs or other local limits applicable to those Industrial Users provided such limits are authorized by state law. In the case where EPA acts as the Approval Authority and Control Authority, for a local limit to be federally enforceable under 40 CFR 403.5(d), the limit would need to be incorporated into the local POTW's sewer use ordinance or other legal authority.

What are some of the common elements of an enforceable BMP? Many commenters expressed the view that without additional guidance on the structure of BMPs, their use could be subjective and difficult to evaluate or enforce. Others felt that because of their subjective and potentially arbitrary nature, BMPs should not be allowed to serve as local limits. BMPs developed by a POTW to protect against Pass Through and Interference can be structured in such a manner that compliance with their terms can be verified by a POTW, and can provide a useful alternative to numeric limits in situations where such limits are infeasible or impractical. In addition, BMPs established by POTWs as local limits will be subject to oversight from the POTW's state and EPA Region. These BMPs will be evaluated by states and EPA based on factors such as legal authority, effectiveness, and enforceability.

Based on EPA's experience and observations of situations where BMPs have been effective, enforceable BMPs should generally include the following elements. Depending on the sector being controlled, however, certain elements such as installation of treatment or prohibitions on practices may not be applicable.

- *Specific notice to IUs of requirements and enforceability.* This notice, provided through POTW sewer use ordinances or individual or general control mechanisms, should make clear which Users are subject to the BMPs, and what affected Users must do to comply with their requirements.
- *Installation of treatment.* POTWs should provide criteria or specifications that the equipment must satisfy. For example, a requirement for use of oil/water separators at auto repair facilities could include sizing or design criteria. EPA cautions POTWs to avoid endorsing the use of specific brands or vendors.
- *Requirements for or prohibitions on certain practices, activities or Discharges.* POTWs should include specific requirements or prohibitions where necessary to ensure that the use of such BMPs is protective. An example would be a prohibition on Discharges of tetrachloroethene from dry cleaning facilities.
- *Requirements for operation and maintenance (O&M) of treatment units.* POTWs should spell out their O&M expectations to ensure that treatment systems continue to perform as designed and installed. For example, restaurants could be required to have grease interceptors cleaned out at a specified frequency.
- *Timeframes associated with key activities.* POTWs should provide timeframes for when management practices must be implemented, or when required treatment must be installed and fully operational. Other milestones should be added to the schedule where necessary to facilitate the oversight of BMP implementation.
- *Compliance certification, reporting and records retention.* Establishing specific procedures for such requirements will enable POTWs to verify whether required equipment has been installed, or whether required maintenance has been performed at the specified frequency.
- *Provision for re-opening or revoking the BMP conditions.* As with numeric limits, POTWs should include language in the sewer use ordinance and/or facility control mechanisms that enables them to revoke the control mechanism at any time to include modified numeric limits or BMPs. For example, the POTW may find it necessary to revoke an Industrial User's control mechanism where the POTW determines that the User has not complied with applicable BMPs, or where the POTW determines

that it is easier to determine compliance with a numeric limit.

• *Other requirements as determined by the POTW.*

What local legal authority changes will be necessary? POTWs wishing to establish BMPs instead of or in addition to numeric local limits will need to evaluate their sewer use ordinances to ensure they provide adequate authority to require compliance with BMPs by affected Users. Further, BMP requirements such as those discussed above, and which IUs they cover, should be specified in POTW sewer use ordinances and/or Industrial User control mechanisms.

How will compliance and significant noncompliance be determined? Concerns were expressed regarding the ability of Control and Approval Authorities to determine whether a User is in compliance with BMPs. In EPA's view, BMPs that set specific requirements, incorporating as appropriate the common elements presented above, (i.e., requirements or prohibitions on practices, activities or Discharges; requirements for installation, operation and maintenance of treatment units; timeframes for key activities; reporting and records retention; certification and reporting of compliance, etc.) will aid POTWs and Approval Authorities in their compliance determinations. Once these requirements are established for one or more facilities in a sector, an IU's compliance status should be able to be verified through a combination of self-reporting and verification inspections. Where a facility subject to BMPs has not satisfied the requirements in the sewer use ordinance or control mechanism, the POTW would need to use its enforcement response plan (ERP) to determine the appropriate response, and relevant significant noncompliance criteria to assess whether the facility is in significant noncompliance. For example, a facility that fails to install required treatment equipment within a specified timeframe would generally be viewed as being in significant noncompliance 90 days after the schedule date. See 40 CFR 403.8(f)(2)(vii)(E). Likewise, a facility would be in significant noncompliance if it failed to submit a compliance certification within 45 days from the due date. See 40 CFR 403.8(f)(2)(vii)(F). POTWs adopting BMPs as local limits, or that have Categorical Industrial Users whose categorical Standards include BMPs, should evaluate their ERPs to ensure that they reflect the need to enforce non-numeric requirements.

D. Slug Control Plans (40 CFR 403.8(f)(1)(iii)(B)(6) and 403.8(f)(2)(vi))

Today's final rule addresses the requirement that POTWs evaluate the need for a slug control plan for SIUs every two years. The rule will provide POTWs with the flexibility to determine how frequently to evaluate the need for such plans, based on local conditions. At the same time, the new rule specifies that an evaluation must be undertaken for each SIU once within a specified timeframe. Today's rule also clarifies that an actual slug control plan (e.g., the physical document itself) is not the POTW's only option for controlling facilities with a higher potential for Slug Discharges. The regulation states that the POTW may choose to require that the SIU take specific, preventative actions instead of requiring the development of a slug control plan. Regardless of the requirements imposed by the POTW, today's rule will require that where actions to control Slug Discharges are determined to be necessary, the SIU's control mechanism must include provisions addressing those requirements.

These revisions do not alter current requirements regarding annual monitoring and inspections of SIUs. POTWs are still required to conduct their annual facility inspections and effluent monitoring for each of their SIUs. The revisions also do not change the POTW's requirement to prevent disruptions caused by Slug Discharges. EPA expects that, as an integral part of its ongoing oversight of all SIU facilities, the POTW will consider whether adequate measures are in place to avoid Slug Discharges. The POTW is authorized to use its own discretion in determining the timing, level of detail, and commitment of resources necessary to ensure the facility has adequate measures in place to protect against Slug Discharges. POTWs may still require the SIU to develop a slug control plan or take specified preventative measures to prevent Slug Discharges whenever the facility's slug control measures are judged to be inadequate.

Today's rule does not impose any new requirements on Industrial Users. SIUs remain subject to current requirements to eliminate or mitigate the effects of a Slug Discharge. These actions may include constructing physical containment facilities as well as implementing sound management practices to prevent Slug Discharges.

1. What were the rules in place prior to today's rulemaking?

A Slug Discharge is defined as "* * * any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or non-customary batch Discharge" (40 CFR 403.8(f)(2)(v)). EPA notes that the subparagraph numbers have changed slightly in the final rule due to other, unrelated modifications. The appropriate rule reference is now 40 CFR 403.8(f)(2)(vi). The regulations require POTWs to ensure that Industrial Users have policies and procedures in place to prevent or mitigate the effects of Slug Discharges. Section 40 CFR 403.8(f)(2)(v), prior to today's rulemaking, required POTWs to "* * * evaluate, at least once every two years, whether each such Significant Industrial User needs a plan to control Slug Discharges." The function of such a plan is to ensure that an SIU has a planning and implementation tool to prevent Interference at a POTW treatment facility by a non-routine or accidental Discharge. The minimum elements required in a slug control plan are (1) a description of Discharge practices, (2) a description of all stored chemicals at the facility, (3) procedures for immediately notifying the POTW of the Slug Discharge and providing written follow-up notification, and (4) a variety of procedures (e.g., inspection and maintenance of chemical storage areas) for preventing adverse impacts from any accidental spills (40 CFR 403.8(f)(2)(v)(A) to (D)).

The requirement for a once every two years review of the need for a slug control plan was part of the Domestic Sewage Study rulemaking (55 FR 30082, July 24, 1990). In the preamble discussion to that rulemaking, EPA explained the need for POTWs to implement slug control programs. As part of the discussion, EPA referenced the guidance manual, *Control of Slug Loadings to POTWs* (EPA 21W–4001, February 1991, see *http://www.epa.gov/npdes/pubs/owm021.pdf*), which was then under preparation. This manual provides detailed guidance for POTWs to evaluate whether SIUs need to develop slug control plans. It also provides guidance for SIUs in developing those slug control plans. In addition, the manual recognizes that POTWs need to determine whether existing on-site conditions may impact their treatment works, while industries are in the best position to solve problems relative to their physical plants or production processes. Part 403 requires that, where found to be necessary, a POTW must require an SIU to develop a plan or impose some specified control actions to prevent Slug Discharges.

2. What changes did EPA propose?

The proposed rule suggested eliminating the requirement that POTWs evaluate the need for a slug control plan for each SIU every two years. Instead, EPA proposed giving POTWs the flexibility to review the need for slug control plans or other actions as part of their ongoing oversight of Industrial Users. The proposal would have added language to clarify that requiring an actual slug control plan is one of several options the POTW has at its disposal for controlling facilities with a higher potential for Slug Discharges. The proposed rule would have clarified that a POTW could choose to require that the SIU take certain specified preventative actions to control the Slug Discharge potential, instead of developing a slug control plan. In addition, to ensure that slug controls are enforceable to the same extent as other Standards and requirements, the proposal would have added language to require that, where a slug control plan or other action is found to be necessary, appropriate requirements would be placed in the Industrial User's control mechanism.

3. What changes is EPA finalizing in today's rule?

In today's final rule, consistent with the proposal, EPA removes the required minimum frequency for conducting POTW evaluations for the need for slug control plans or other control actions. The final rule also formalizes the requirement for SIUs to address Slug Discharges by requiring that the POTW include language in the User's control mechanism to control Slug Discharges, if it determines that a slug control plan or other action is necessary. These rule revisions appear in 40 CFR 403.8(f)(1)(iii)(F) and 403.8(f)(2)(vi).

What significant changes were made to the proposed rule?

Today's rule makes the following changes to the proposed rule:

Minimum evaluation frequency: Today's rule specifies that POTWs must evaluate at least once the SIU's need for a slug control plan or other action to control Slug Discharges. See 40 CFR 403.8(f)(2)(vi). While the POTW may choose how frequently to assess slug-related concerns, it is EPA's view that it is important to impose a minimum frequency of one time per SIU to ensure that each SIU receives at least one thorough evaluation. The provision specifies that this evaluation must have occurred within one year of the effective date of today's rule for SIUs identified as significant (yet never evaluated for the need for a slug control plan) prior to the rule's effective date. Also, SIUs identified as significant after the effective date of the rule must be evaluated for the need for a slug control plan within one year of being identified as significant.

Notification of significant facility change: EPA also adds a requirement that SIUs must notify the POTW immediately of any changes at their facilities, not already addressed in their slug control plan or other slug control requirements, which may affect the potential for a Slug Discharge. This requirement is especially relevant in the case of those Users for which the POTW has determined, from some prior assessment, that a slug control plan or other action is unnecessary. However, EPA emphasizes that this requirement affects all SIUs, even those that already have slug control plans or other measures in place. See 40 CFR 403.8(f)(2)(vi). This provision places an affirmative duty on such Users to provide the POTW with updated information on the potential slug risks that are posed by industrial process changes. This provision is consistent with, but differs from the existing notification of changed Discharge in 40 CFR 403.12(j), which focuses on advance notice of change in the volume or character of pollutants in the Discharge itself.

4. Summary of Major Comments and EPA Response

The following summarizes the major comments received and EPA's response.

Should POTWs be required to conduct annual inspections of SIUs to determine the adequacy of slug control plans? One commenter supported the proposed rule change, but recommended adding language to require the POTW to verify during an inspection that a slug control plan, if required, is adequate. EPA agrees with the commenter that the POTW should be assessing the adequacy of existing slug control plans during its annual inspection of SIUs. However, EPA has not included a specific requirement in the regulation to this effect since existing inspection and sampling guidance already recommend that POTWs assess the adequacy of slug control plans during the POTW's annual inspection.

EPA emphasizes that this provision does not affect the POTW's requirements to conduct inspections of its SIUs, nor has EPA changed its recommendations about how to assess slug-related issues at each facility. According to EPA's *Industrial User Inspection & Sampling Manual for POTWs* (1994) (*http://www.epa.gov/npdes/pubs/owm0025.pdf*). POTW inspectors should ask SIU staff if they are familiar with slug control procedures, and request that a copy of the slug control plan be provided for an assessment of its adequacy. EPA's guidance document *Control of Slug Loadings to POTWs* (1991) (*http://www.epa.gov/npdes/pubs/owm021.pdf*) recommends that inspectors verify compliance with slug control requirements and plans (see p. 2–44). In addition, EPA's slug loading guidance indicates that "the inspector should ascertain the Industrial User's status with regard to compliance with the Plan, report any deficiencies observed in the Industrial User's current Plan, and suggest alternatives or modifications" (see p. 2–44).

Can existing control measures or planning documents substitute for slug control plan requirements at SIU facilities? Several commenters, while supporting the proposal, requested that EPA clarify that existing spill containment procedures or plans may adequately fulfill the Pretreatment requirements concerning slug control plans. EPA agrees with the commenter that there will be situations where existing containment and spill planning documents at an Industrial User facility describe adequate means for protection against Slug Discharges. EPA recognizes that a number of existing requirements under other statutes and regulations could serve as components of slug control plans. For example, Spill Prevention, Control, and Countermeasures (SPCC) plans may address some components of a slug control plan. A POTW could also consult existing Emergency and Hazardous Chemical Inventory reports (EPCRA Section 312, 40 CFR 370) typically submitted to local fire marshals or other Local Emergency Planning Committee offices for the facility. If an SIU is covered by any of these pre-existing plans, the POTW may accept such plans in partial or complete fulfillment of the slug control requirements, as long as each element set forth in 40 CFR 403.8(f)(2)(vi)(A)–(D) is addressed in an acceptable manner in some document or collection of documents, and a reference to the need to comply with these procedures is included in the User's control mechanism pursuant to 40 CFR 403.8(f)(1)(iii)(F). However, EPA notes that many of these pre-existing plans have been developed for purposes other than control of Slug Discharges to POTWs, and the POTW must carefully review the plans to ensure that they

meet the requirements of a slug control plan and the needs of the POTW.

In summary, under today's rule, a POTW has the discretion to determine, based on an initial inspection or previous evaluations, that existing procedures and control measures at the facility make the development of a slug control plan unnecessary. The POTW should document this finding as part of its records, and, consistent with existing EPA guidance, should annually assess the adequacy of these existing procedures and control measures as part of its annual inspections. Also, implementation of these procedures or control measures should be included as requirements in the facility's control mechanism.

How should the POTW determine how often to conduct evaluations at individual facilities concerning whether a slug control plan is needed? One commenter pointed out that how frequently a POTW should evaluate the need for a slug control plan may vary for different facilities. The commenter emphasized that at some facilities, conducting such an evaluation once every two years may not be sufficient. Regarding the commenter's concerns about the frequency of Slug Discharge evaluations, under today's rule, each POTW will need to determine what evaluation frequency is appropriate for its program and/or for individual facilities. EPA also recommends that POTWs consult with the Agency's guidance document, *Control of Slug Loadings to POTWs* (1991) (*http://www.epa.gov/npdes/pubs/owm021.pdf*), which suggests different ways to prioritize industrial facilities according to Slug Discharge potential and strategies for assessing the adequacy of existing plans and programs. To ensure that POTWs are provided with sufficient notice of a change in Slug Discharge potential, EPA has added an additional requirement for SIUs which are not required to develop a slug control plan to notify the POTW immediately of any changes at their facilities affecting the need for plans or other actions to address Slug Discharges. It is EPA's position that placing the affirmative duty on the SIUs to notify the POTW of such changes further reduces the potential for Slug Discharge in the time between on-site inspections.

Although supporting the proposal, several commenters suggested that EPA adopt further criteria for determining when a slug control plan is necessary at an individual facility. Among the suggested criteria were the following: (1) Slugs from an industrial facility violated the Pretreatment requirements or otherwise harmed the POTW; or (2) the amount of stored materials, the absence of sufficient secondary containment, and the proximity of drains to the sewer create a significant risk of a harmful slug. EPA agrees with the commenter in general that criteria suggesting when a slug control plan should be developed would assist POTWs in making this decision. On the other hand, EPA decided that it should not develop rigid criteria in its regulation establishing when slug control plans should be required.

EPA emphasizes that a POTW is in the best position to make such determinations and, since such requirements will help ensure continued compliance with its NPDES Permit, it is in the interest of the POTW to do so. However, in lieu of providing a list of strict criteria, EPA suggests that POTWs and SIUs consult the Agency's guidance document, Control of Slug Loadings to POTWs (1991) (*http://www.epa.gov/npdes/pubs/owm021.pdf*), for recommendations on significant factors and types of industries to consider in determining which facilities pose a greater risk of Slug Discharge, and, therefore, should be required to develop a slug control plan. For instance, the guidance document highlights the following as the most significant factors to consider: Quantity and types of materials used or stored at an IU and their potential for causing violation of local limits or the general or specific prohibitions; potential for such materials to enter the sewer system and cause damage (i.e., whether control measures are in place); and adequacy of existing controls to prevent any potential slug loading (see p. 2–19). EPA points out, though, that the guidance also clarifies that these evaluations should be conducted on a plant-by-plant basis and that the list of factors and target industries provides generalizations from which to start. (see p. 2–7).

In response to the commenter's recommended criteria, EPA agrees that facilities which have had Slug Discharges, thus violating the Pretreatment Requirements or otherwise harming the POTW, will need a slug control plan. The slug control plan requirements were adopted to provide POTWs with a mechanism to prevent slug-related impacts. EPA is concerned that this criterion may suggest to POTWs that it is sufficient to wait for circumstances to arise (e.g., an instance of Interference at the treatment plant) before addressing the need for a slug control plan at a potentially higher risk facility. EPA does not agree that the only situations where an SIU should be required to develop a slug control plan are those where a violation of the POTW's Pretreatment program requirements has occurred. Part of what the POTW must evaluate at each SIU is whether there is the "reasonable potential" for Interference or Pass Through from a Slug Discharge, thereby necessitating a slug control plan or other preventative action. EPA suggests that waiting for a violation to occur before requiring a slug control plan conflicts with the proactive intent behind 40 CFR 403.8(f)(2)(vi) and may result in unnecessary Interference or Pass Through occurrences.

EPA does agree that the commenter's second suggested criterion, that the amount of stored materials, the absence of sufficient secondary containment, and the proximity of drains to the sewer create a significant risk of a harmful slug, would be appropriate POTW considerations for requiring the development of a slug control plan. These considerations are contemplated in the above referenced guidance.

How does the rule affect the current practice of evaluating SIUs annually for the adequacy of slug controls? A few commenters were opposed to the proposal because they considered it to be unnecessary. These commenters emphasized the limited burden imposed by the current biannual review requirement and the current practice of conducting annual SIU inspections which focus on, among other things, the adequacy of controls or existing plans for addressing the potential for Slug Discharges. Another commenter objected to the proposal because of concern that POTWs would no longer dedicate the necessary attention to evaluating SIU facilities for the potential for Slug Discharges.

The evaluation of slug control procedures and measures is already occurring at POTWs on an annual basis, typically during the inspection of the SIU. This practice is consistent with EPA's guidance document, Industrial User Inspection and Sampling Manual for POTWs (1994) (*http://www.epa.gov/npdes/pubs/owm0025.pdf*). EPA's modification of the frequency of the POTW's evaluation of the necessity of slug control plans should not affect the POTW's practice of conducting annual inspections of relevant slug control procedures and measures. The final rule changes do not absolve POTWs from the requirement to prevent disruptions caused by Slug Discharges. In many instances, operating conditions at an SIU will not have changed significantly since the issuance of its individual control mechanism and the facility will be in compliance with all of its Permit conditions. Under these circumstances,

the requirement to review and evaluate the need for a slug control plan or other preventative actions could be an unproductive use of resources by the POTW. In addition, today's revision to 40 CFR 403.8(f)(2)(vi) requires that each POTW evaluate the need for a slug control plan or other action at least one time at every SIU. Following this evaluation, the POTW may determine its own schedule for conducting further evaluations for the need for a plan.

In practical terms, EPA expects POTWs to take the following actions with regard to Slug Discharges: Evaluate all of their SIUs at least once for the need for a slug control plan, conduct follow-up evaluations for facilities not required to develop a slug control plans or take other actions as necessary, and inspect each SIU annually to determine the adequacy of and compliance with existing procedures and control measures. While today's revision may reduce the administrative resources currently devoted to biannual reviews for the need for a slug control plan, the POTW's overall level of oversight over Slug Discharges will not be reduced.

EPA also points out that Approval Authority audits and Pretreatment Compliance Inspections (PCIs) of POTW Pretreatment Programs will offer a valuable opportunity to evaluate how today's revisions are being implemented. During these audits or PCIs, the POTW will need to demonstrate that each SIU has been evaluated at least once (or that there is a plan to conduct such an evaluation within the coming year). EPA suggests that where a slug control plan or other action was not deemed necessary, a plan to re-evaluate the SIU for the need for a plan or other action as necessary exists. The POTW may choose a specified frequency level to re-evaluate the SIU, or it may choose to re-evaluate the facility following a notification of changed Discharge pursuant to 40 CFR 403.12(j) or 40 CFR 403.8(f)(2)(vi). EPA notes that SIUs will now be required to notify the POTW of any changes at their facility that affect the need for a slug control plan or other actions to address Slug Discharges, although POTWs still have the responsibility during the facility inspections to ensure that these notifications have been made. In addition, during the audit or PCI, the Approval Authority should determine whether the POTW is conducting an assessment of the SIU's on-site procedures and measures to control for potential slug-related Discharges.

Does the slug control plan, if required, need to be included in the SIU's control mechanism? One commenter was opposed to what it interpreted as EPA's requirement in 40 CFR 403.8(f)(1)(iii)(B)(*6*) to include the entire slug control plan document in the SIU's control mechanism. The commenter further emphasized that the slug control plan should be retained as a separate document, and suggested that the plan be incorporated by reference into the control mechanism requiring compliance with the approved plan.

EPA disagrees with the commenter as far as reading 40 CFR 403.8(f)(1)(iii)(B)(*6*) to require the inclusion of the entire slug control plan in the SIU's control mechanism. Section 403.8(f)(1)(iii)(B)(*6*) provides that the control mechanism must include "requirements to control Slug Discharges." EPA expects that POTWs will include language in the control mechanism that requires control of Slug Discharges, rather than the terms of a particular SIU's plan. Including the entire slug control plan may prove to be administratively burdensome since changes made to the plan during the term of the control mechanism would potentially require that the control mechanism be modified, or be reopened and reissued.

E. Equivalent Concentration Limits for Flow-Based Standards (40 CFR 403.6(c)(6))

Today's amendment to the Pretreatment Regulations authorizes the use of concentration-based limits in lieu of flow-based mass limits for the facilities in the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) (40 CFR part 414), Petroleum Refining (40 CFR part 419), and Pesticide Chemicals (40 CFR part 455) categories. The Control Authority may use the concentration limits listed in the categorical Pretreatment Standards for these three categories as an alternative to the current requirement to convert those concentration limits to flow-based mass limits. Control Authorities establishing concentration-based Pretreatment Standards instead of mass-based limits must document that dilution is not being used as a substitute for treatment (*see* §§ 403.6(d), 414.111(a), 419, and 455). Additionally, the Control Authority is required to adjust Permit limits using the combined wastestream formula in § 403.6(e) when the wastestream used for demonstrating compliance with the Permit limits is mixed with non-process wastewater or wastewater from other processes.

1. What are the current rules?

What is a flow-based mass limit?

National categorical Pretreatment Standards establish limits on pollutants discharged to POTWs by specific industrial sectors. The Standards establish limitations on the amount of pollutants to be discharged by individual dischargers in different ways for different categories. The regulations establishing Pretreatment Standards for new and existing indirect dischargers in the Organic Chemicals, Plastics, and Synthetic Fibers Category (OCPSF), for new indirect dischargers in the Petroleum Refining category, and for new and existing indirect dischargers in the Pesticide Chemicals category currently require limits of certain pollutants to be expressed in terms of mass, based on the promulgated concentrated-based Standards and the average daily flow rate of the Industrial User's regulated process wastewater (*see* §§ 414.111(a), 419.17(b), 419.27(b), 419.37(b), 419.47(b), and 419.57(b), 455.26, 455.27). For an OCPSF indirect discharger, a pesticide chemicals indirect discharger, or a new petroleum refining indirect discharger, the Control Authority develops a mass limit by multiplying the applicable pollutant concentration that EPA promulgated in the effluent guidelines (expressed in terms of mass of pollutant per volume of Discharge) by the average daily flow rate of the Industrial User's regulated process wastewater (expressed in terms of volume per day). The result is a Permit limit on the mass of pollutants per day (*see* 58 FR 36890, July 9, 1993).

The average daily flow rate should be based upon a reasonable measure of the Industrial User's average daily flow for at least a 30-day period (*see* 40 CFR 403.6(e)(1)). Additionally, EPA "strongly urges the Control Authority to develop an appropriate process wastewater flow for use in computing the mass effluent or internal plant limitations based on water conservation practices," (*see* 58 FR 36890, July 9, 1993). Finally, a Permit may be modified during its term, either at the request of the permittee (or another interested party) or on the Control Authority's initiative, to increase or decrease the flow basis in response to a significant change in production (40 CFR 124.5, 122.62). A change in production could be an "alteration" of the permitted activity or "new information" that would provide the basis for a Permit modification (40 CFR 122.62(a)(1),(2)) (*see* 58 FR 36891, July 9, 1993).

Why was the mass limit approach developed?

Effluent guidelines may be specified in a number of ways including production normalized (mass-pollutant/production unit) and concentration-

based limitations (mass-pollutant/volume of wastewater). These two types of effluent guidelines limits can be converted to a mass-based Standard by using a reasonable measure of the Industrial User's actual long-term daily production (for production normalized limitations) or the Industrial User's actual long-term average daily flow rate (for concentration-based limitations). EPA prefers setting production normalized limitations, where feasible, since production normalized limitations can require flow reduction and reduces any potential for the substitution of dilution for treatment. Specifically, production normalized limitations are calculated from production normalized flows (volume of wastewater/production unit) and incorporate wastewater flow reductions representing Best Available Technology Economically Achievable (BAT) (technology basis for Pretreatment Standards for Existing Sources, or PSES) or New Source Performance Standards (technology basis for Pretreatment Standards for New Sources, or PSNS).

EPA has established concentration-based Standards when production and achievable wastewater flow cannot be correlated nationally. EPA has explained how to calculate a mass limit in the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) regulation. A mass limit is developed from the concentration-based Standard by multiplying the promulgated Pretreatment Standard (expressed as a concentration) by the Industrial User's actual long-term average daily flow rate. This approach re-enforces the requirements of the combined wastestream formula (*see* 40 CFR 403.6(e)) to minimize the potential for dilution of process wastewaters by non-process wastewater. The combined wastestream formula of Section 403.6(e) applies to indirect dischargers where process wastewater is mixed prior to treatment with wastewater other than that generated by the regulated process.

What are the problems with mass limits based on flow?

Flow-based mass limits can, however, be difficult for the Control Authority to implement. To develop a flow-based mass limit, the Control Authority must determine the average daily flow rate of the Industrial User's regulated process wastewater and then multiply that value by the appropriate promulgated concentration Standard. This may be difficult in situations where the facility has highly variable production that leads to flows that often vary week-to-week or day-to-day. This is especially true for smaller facilities where: (1) The average daily flow rate of the Industrial User's regulated process wastewater may be infrequent or low and difficult to monitor; and (2) production tends to be more variable as the installation of equipment to provide flow equalization may not be practical.

In addition, testing for compliance with the flow-based mass limit requires having accurate information on the flow from all regulated processes at the time the sample is taken. Testing for compliance with a concentration limit only requires taking the wastewater sample and comparing the sampled concentration to the limit. In particular, since promulgation of the OCPSF Pretreatment Standards, there have been difficulties in getting Control Authorities and OCPSF facilities to correctly calculate flow-based mass limits, and to provide necessary data to determine compliance with the Standards. Deficiencies in Permits and control mechanisms have in the past hindered enforcement actions against these facilities. Enforcing mass-based Standards also becomes more complicated because there is an additional factor in the formula to calculate mass-based limits. In order to measure compliance, both flow and concentration of the pollutant need to be accurate and verified in order to produce legally enforceable mass-based results.

May alternative limits be developed for flow-based categorical Standards?

Currently, 40 CFR 403.6(c) allows Control Authorities to apply an equivalent concentration limit in addition to a current mass limit to implement a Pretreatment Standard. However, the regulations do not allow equivalent concentration limits in lieu of mass limits when the Pretreatment Standard requires a mass limit to be calculated from the promulgated concentration-based Standards and the average daily flow rate of the Industrial User's regulated process wastewater.

2. What changes did EPA propose?

EPA proposed to allow Control Authorities to use promulgated concentration-based limits instead of flow-based mass limits in establishing limits for Industrial Users in the OCPSF, Petroleum Refining, and Pesticide Chemicals categories. EPA proposed that the Control Authority would be allowed to apply such equivalent concentration limits only if the flow from the facility is so variable that the development of mass limits is impractical. EPA stipulated that 40 CFR 403.6(d) would continue to prohibit facilities from increasing flow in order to meet their concentration limits through dilution.

3. What changes is EPA finalizing in today's final rule?

The final rule allows Control Authorities to use concentration-based limits instead of flow-based mass limits for new and existing indirect dischargers in the OCPSF category, new indirect dischargers in the Petroleum Refining category, and new and existing indirect dischargers in the Pesticide Chemicals category. EPA is not limiting the Control Authority's authority to develop concentration limits to circumstances in which the Control Authority determines that the facility's flow is "so variable as to make mass limits impracticable." EPA notes that Section 40 CFR 403.6(d) will continue to prohibit facilities from increasing flow in order to meet their concentration limits through dilution. As with other concentration limits, the Control Authority should be certain that dilution is not occurring and that the Discharge represents regulated process wastewater flows. The concentration may need to be adjusted using the combined wastestream formula in 40 CFR 403.6(e) if the wastestream is mixed with non-process wastewater or wastewater from other processes.

New 40 CFR 403.6(c)(6), applicable only to facilities in the OCPSF, Petroleum Refining, and Pesticide Chemicals categories, requires Control Authorities to document that dilution is not being substituted for treatment. To verify that equivalent concentration limits are not subsequently being met through use of dilution flows, Control Authorities should note that 40 CFR 403.12(e)(1) requires Categorical Industrial Users to provide information regarding maximum and average daily flows in their periodic reports, and enables them to require more detailed flow data as necessary. Using this authority, EPA recommends that Control Authorities consider specifying appropriate flow monitoring requirements and including evaluation of flow data in the review of periodic reports for Industrial Users subject to equivalent concentration Standards. This will enable Control Authorities to determine if there have been changes in flows that may indicate dilution, such as increases in process, non-process or overall flows, especially those not accompanied by production increases.

When are the equivalent concentration limits effective?

EPA notes that flow-based mass Standards, like all National categorical Pretreatment Standards, are self-

implementing for new and existing indirect dischargers in the OCPSF category and for new indirect dischargers in the Petroleum Refining category. Facilities to which these Standards are applicable must comply with the flow-based mass Standards unless a Permit or other control mechanism is issued by the Control Authority which establishes equivalent concentration limits under 40 CFR 403.6(c)(6). Where the Control Authority has not issued a control mechanism that establishes categorical concentration-based limits, the Industrial User must comply with the default flow-based mass limits as established in the applicable categorical Pretreatment Standard.

EPA notes that, for the Pesticides Chemicals category, in certain circumstances, an Industrial User may already be subject to concentration based limits rather than the otherwise required mass limits. Where the Control Authority has not established flow-based mass limits as required, Sections 40 CFR 455.26 and 455.27 provide that Industrial User must comply with the default concentration-based limits as established in the categorical Pretreatment Standard.

EPA emphasizes that for facilities in the OCPSF, Petroleum Refining, and Pesticide Chemicals categories, where the Control Authority has properly authorized the use of an equivalent concentration limit and has incorporated that limit into the Industrial User's control mechanism, the concentration limit replaces the mass limit. The final rule requires that an Industrial User must comply with the equivalent limit in lieu of the promulgated categorical Pretreatment Standard once the limit is incorporated into its control mechanism. The Control Authority may also determine that an Industrial User should be subject to both the flow-based mass limit as well as the concentration-based limit. When incorporated into the issued control mechanism, the Industrial User would have to comply with both limits. As with other equivalent concentration limits, as currently provided in 40 CFR 403.6(c), the equivalent limits being authorized under today's final rule are Pretreatment Standards for the purposes of Sec. 307(d) of the Clean Water Act and are federally enforceable.

4. Summary of Major Comments and EPA Response

A majority of the commenters supported the proposed rule as written, and most of the remaining commenters stated qualified support. Only one commenter opposed the proposal. The following section summarizes the most significant comments received and EPA's response.

Is Approval Authority review required of an Industrial User's proposed concentration limit prior to Control Authority approval? A total of 22 commenters disagreed that it would be appropriate to require Approval Authority review of an Industrial User's proposed concentration limit prior to Control Authority approval. The primary reasoning stated was that such a requirement is not necessary and would create additional burden.

EPA notes that this provision is intended to allow the permit limit to be expressed in alternate units. It is not anticipated that this revision will change the Control Authority's enabling legislation to issue and enforce a control mechanism. As such, EPA does not consider this provision to be a modification of a POTW Pretreatment Program under 40 CFR 403.18, and, therefore, finds that a POTW's use of this provision is not subject to the specified approval procedures in this section. The new equivalent limit is subject to review as part of routine Approval Authority oversight activities, such as a Pretreatment Compliance Inspection or a Control Authority audit. In accordance with current regulations, Industrial User control mechanisms and information necessary for determining permit limitations and compliance must be publicly available.

Is this provision limited to highly variable flows? Numerous commenters addressed the question of whether this provision should only be applied to highly variable flows as well as how to define the term "highly variable flow." A total of 12 commenters stated that the rule should not be limited to only highly variable flows. Many mentioned the existence of factors in addition to highly variable flows that make implementation of flow-based mass limits impractical, such as the cost of obtaining accurate samples or the difficulty of sampling at facilities with very low flows. Ten commenters suggested that the Control Authority have the ability to define "highly variable flows" on a case-by-case basis since the basis for such a determination is highly site-specific and can vary from seasonal variations in flow to hourly variations in flow. Ten commenters thought that a 20 percent deviation from average flow is an adequate measure for "highly variable flow," while five commenters requested that EPA not specify a definition for "highly variable flow" in the regulations.

EPA acknowledges that the there are numerous factors, many of which are site-specific, involved in determining that a facility has "highly variable flow(s)", and agrees that it would be difficult to establish a clear-cut definition of "highly variable flow" that would apply to all facilities. To be consistent with the goals of providing flexibility in this rule, and to support the Control Authority's discretion on this site specific issue, EPA has decided to allow Control Authorities to determine when the acceptable circumstances exist to allow the use of concentration limits.

Is this provision consistent with the Clean Water Act? The commenter that opposed this provision stated that EPA lacks the authority to create a variance or an alternative implementation mechanism and therefore will violate sections 307 and 402 of the Clean Water Act. The commenter also questioned the need for this proposed change, suggested that it will interfere with ongoing enforcement of the categorical Standards and the statutory deadlines for achieving them, and suggested that the record does not demonstrate that this proposed change will protect POTWs and the environment.

EPA is promulgating the changes to its Pretreatment Regulations in part under section 307(b) of the Clean Water Act. Section 307(b) clearly authorizes EPA from time to time to revise Pretreatment Standards as "control technology, processes, operating methods or other alternatives change." Therefore, today's action is not in violation of section 307(b) to the extent this provision amends the Pretreatment Standards for the OCPSF, the Petroleum Refining, and the Pesticide Chemicals Categories. As EPA has explained, the amendments to the regulations will facilitate both User's compliance and POTW oversight. EPA notes that compliance evaluation and enforcement will be more straightforward and less burdensome with new equivalent concentration limits.

Moreover, the current regulations prohibit introduction of pollutants that will adversely affect POTW operations and receiving waters quality. Currently, 40 CFR 403.5 requires approved pretreatment programs and POTWs receiving pollutants from Industrial Users with potential to pass through or interfere with the POTWs' operations to develop and implement local limits to protect the POTW operations and prevent Pass Through and Interference. Consequently, the use of concentration limits in lieu of mass limits would not be authorized if it resulted in a violation of local limits approved under 40 CFR 403.5. Furthermore, this provision may be implemented only following

determination of its feasibility by Control Authorities, and not unilaterally by Industrial Users. Control Authorities' local limits will continue to ensure protection of the POTW operations and its receiving environment.

F. Use of Grab and Composite Samples (40 CFR 403.12(b), (d), (e), (g), and (h))

This section discusses: (1) The application of minimum required grab samples for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics to the periodic compliance reports; (2) when a time-proportional sample may be used instead of a flow-proportional sample; (3) when multiple grab samples may be composited prior to analysis; (4) whether four grab samples are required whenever grab sampling is appropriate; and (5) the sampling of facilities that discharge less than 24-hours per day. Other issues raised by commenters are also discussed.

1. What are the existing rules?

What are "grab samples"?

A grab sample is "* * * a sample which is taken from a wastestream without regard to the flow of the wastestream and over a period of time not to exceed 15 minutes" (Industrial User Inspection and Sampling Manual for POTWs, EPA 831/B–94–001, April 1994, *http://www.epa.gov/npdes/pubs/owm0025.pdf*). Grab samples of volatile organic compounds (VOCs) must be collected almost instantaneously (*i.e.*, less than 30 seconds of elapsed time) and properly preserved (Comparison of Volatile Organic Analysis Compositing Procedures, EPA 821/R–95–035, September 1995). An analysis of an individual grab sample provides a measurement of pollutant concentrations in the wastewater at a particular point in time. Grab samples are usually collected manually, but can be obtained with a mechanical sampler.

Grab samples are required in order to accurately analyze those pollutant parameters that may be affected by biological, chemical, or physical interactions and/or exhibit marked physical and compositional changes within a short time after collection. Grab samples should be used when: (1) Wastewater characteristics are relatively constant; (2) parameters to be analyzed are likely to be affected by the compositing process, such as the procedures used for oil and grease; (3) composite sampling is infeasible or the compositing process is liable to introduce artifacts of sampling; and (4) the parameters to be analyzed are likely to change with storage. In particular, accurate determination of pH, temperature, total phenols, oil and grease, sulfide, volatile organic compounds, and cyanide requires properly collecting and carefully preserving grab samples.

What are composite samples?

A composite sample is formed by mixing discrete samples or "aliquots." For a "flow-proportional" composite sample, each individual aliquot is collected after the passage of a defined volume of Discharge (*e.g.*, every 2,000 gallons). For a "time-proportional" composite sample, the aliquots are collected after the passage of a defined period of time (e.g., once every two hours), regardless of the volume or variability of the rate of flow during that period. Flow-proportional compositing is usually preferred when effluent flow volume varies appreciably over time. The number of discrete samples necessary for a composite sample to be representative of the Discharge depends upon the variability of the pollutant concentration and the flow.

Automatically collected composite samples are usually preferred to collecting grab samples and then manually compositing the grabs into a single sample. Possible handling errors made during the compositing process could yield a sample that is not truly representative of the Discharge. However, composite samples can be prepared from manually collected grab samples if each grab contains a fixed volume that is retrieved at intervals that correspond to the periods of wastewater Discharge or time of the facility's operation.

When may the requirement for flow-proportional composite samples be waived?

The regulations in effect prior to today's rule allowed Control Authorities to waive the requirement for flow-proportional compositing of samples for baseline monitoring reports and 90-day compliance reports in limited circumstances. These regulations allowed the Control Authority to accept sample data that are obtained from time-proportional composite sampling or a minimum of four grab samples if flow-proportional sampling is infeasible (*e.g.*, the facility cannot accurately measure flow) and the Industrial User demonstrated that these alternative sampling techniques will provide a representative sample of the effluent (40 CFR 403.12(b)(5)(iii)). The section on periodic compliance reports was silent on the subject of grab and flow-proportional sampling.

2. What changes did EPA propose?

EPA proposed to clarify the sampling requirements in 40 CFR 403.12 in the following ways:

Do the sampling requirements apply to periodic reports on continued compliance? EPA proposed to extend the requirements of 40 CFR 403.12(b)(5)(iii), which were explicitly applicable to the baseline monitoring reports and 90-day reports required by 40 CFR 403.12(b) and (d), to the periodic reports required in 40 CFR 403.12(e) and (h). These changes would be accomplished by consolidating the new requirements for all of the reports in 40 CFR 403.12(g). Redundant sections would be removed.

Is a minimum frequency required for grab samples? EPA proposed that for periodic monitoring reports, a minimum of four grab samples would not need to be taken in all instances to measure pH, cyanide, total phenols, oil and grease, sulfides, and volatile organic compounds. Instead, Control Authorities would have the flexibility to determine the appropriate number of grab samples required for periodic compliance reports. For new facilities, the Industrial User would still be required to take a minimum of four grab samples to measure pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds to meet baseline monitoring and 90-day compliance report requirements. For existing facilities, where historical sampling data are available, the Control Authority may authorize a lower minimum.

When and what type of grab samples can be manually composited? EPA proposed to explicitly state that compositing of certain types of grab samples prior to their analysis would be permitted.

When can time-proportional or grab samples be used in lieu of flow-proportional composite samples? EPA proposed that Control Authorities may authorize time-proportional or grab sampling in lieu of flow-proportional sampling as long as the samples are representative of the Discharge.

What are the sampling requirements for those facilities that do not discharge continuously? EPA proposed language intended to clarify that, although a "24-hour composite sample" must be taken within a 24-hour period, the sample should only be collected during that portion of the 24-hour period that the Industrial User is discharging from the regulated process and/or from the treatment unit.

3. What changes are being finalized by EPA in today's rule?

EPA is finalizing language intended to clarify the sampling requirements in 40 CFR 403.12. Specific changes to the regulations, as well as pertinent details related to their implementation, are discussed below.

Do the sampling requirements apply to periodic compliance reports? Today's rule finalizes the extension of sampling requirements, which previously were only explicitly applicable to the baseline monitoring reports and 90-day reports required by 40 CFR 403.12(b) and (d), to the periodic reports required in 40 CFR 403.12(e) and (h). These changes are accomplished by consolidating the new requirements for all of the reports in 40 CFR 403.12(g). Redundant sections are removed.

Is a minimum frequency required for grab samples? The final regulatory changes eliminate the requirement that a minimum of four grab samples be taken in all instances to measure pH, cyanide, total phenols, oil and grease, sulfides, and volatile organic compounds. Control Authorities will have the flexibility to determine the appropriate minimum number of grab samples Industrial Users are required to take. The Control Authorities will be responsible for documenting the site-specific circumstances in the Industrial User's file. New facilities and facilities that make changes or install new treatment are still required to take a minimum of four grab samples to measure pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds to meet baseline monitoring and 90-day compliance report requirements. For facilities where historical sampling data are available, the Control Authority may authorize a lower minimum number of grab samples.

There are some cases where a single grab sample can be reasonably expected to be representative of a Discharge. Appendix V to the EPA guidance (Industrial User Inspection and Sampling Manual for POTWs, EPA 831/B–94–001, April 1994, *http://www.epa.gov/npdes/pubs/owm0025.pdf*) lists cases where a single grab sample may appropriately be substituted for a single composite sample, including small batch Discharges. For example, a homogeneous batch Discharge is consistent with existing guidance on the appropriate use of a single grab sample.

When and what type of grab samples can be manually composited? Today's final rule clarifies that multiple grab samples for cyanide, total phenols, sulfide, oil and grease, and volatile organic compounds collected during a 24-hour period may be composited prior to analysis. Control Authorities also will be allowed to authorize manually composited grab samples for other parameters that are unaffected by compositing procedures. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, EPA clarifies in the rule that multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides, the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory.

It is important that a composite sample provides an accurate representation of the pollutant in the wastewater. The composite sample should provide analytical results that are comparable to averaged results of the individual grab samples taken over a specific time interval. In all cases where a series of grab samples is manually composited, those parameters that have preservation requirements in 40 CFR Part 136 must be properly preserved and/or stored at the time of collection as required by the specific analytical method employed prior to compositing. In addition, EPA wishes to reaffirm that some pollutants are not amenable to the compositing process. For example, total residual chlorine, pH, and temperature samples cannot be "composited" under any circumstances because the results would be changed by the compositing process. Today's final rule does not allow Control Authorities to authorize composite samples for these parameters.

Although analytical procedures for compositing oil and grease samples have been developed, the general consensus among laboratory experts is that current techniques do not provide consistently reliable results. However, continuing advances in analytical technology may provide methodologies that will make accurate compositing of oil and grease samples technically less cumbersome and more cost effective in the future. Under today's rule, the Control Authority has the flexibility to allow Industrial Users to submit data from composited oil and grease samples as long as the samples were composited in the laboratory and the sampling and analytical procedures used are sanctioned by EPA in 40 CFR Part 136.

EPA guidance (*Industrial User Inspection and Sampling Manual for POTWs*, EPA 831/B–94–001, April 1994, *http://www.epa.gov/npdes/pubs/owm0025.pdf*) describes procedures for manually compositing individual grab samples that will provide accurate results. The reader should also consult the regulations in 40 CFR Part 136 to identify the accepted analytical protocols for specific classes of compounds or individual parameters. A separate guidance manual (*Comparison of Volatile Organic Analysis Compositing Procedures*, EPA 821/R–95–035, 1995, *http://www.epa.gov/clariton/clhtml/pubtitleOW.html*) discusses procedures for accurate compositing of volatile organic compounds.

When can time-proportional or grab samples be used in lieu of flow-proportional composite samples?

Today's final rule will allow Control Authorities to waive the requirement that Industrial Users collect flow-proportional samples. The regulation no longer requires Control Authorities to require the Industrial User to demonstrate that flow-proportional samples are "infeasible."

The Industrial User must demonstrate that the time-proportional or grab samples are representative of the Discharge before the Control Authority may allow the Industrial User to submit such samples. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the Discharge and the decision to allow the alternative sampling must be documented in the individual Industrial User records for that facility. The use of statistical approaches to determine representativeness may be appropriate in certain circumstances. See for example, the March 2, 1989, Office of Water Regulations and Standards (OWRS) Memorandum to Region 9 describing the results of a statistical analysis of sampling data from a single industrial facility. Refer to *http://www.epa.gov/region09/water/pretreatment/program_impl.html*. In addition to demonstrating that the samples are representative, the Control Authority must ensure that compliance samples are taken with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions as required by the section modified today at 40 CFR 403.8(f)(2)(vii).

What are the sampling requirements for those facilities that do not discharge continuously?

As will be discussed below in the response to comments section, the final rule does not include the sentence in the proposed rule that read, "For those

Industrial User Discharges subject to categorical Pretreatment Standards that do not operate on a 24-hour per day schedule, the samples must be collected at equally spaced intervals during the period that process wastewater is being discharged." EPA interprets a "day" to be a 24-hour period which does not have to occur within a calendar day. This interpretation is consistent with the definition of "daily discharge" in the NPDES regulations at 40 CFR 122.2. Daily discharge means the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. During parts of the day when there is no discharge of process wastewater, standing water should not be disproportionately sampled and analyzed as it would not be representative of the Discharge from the facility. As always, the Control Authority must prescribe a sampling protocol that produces representative results. The selected protocol should take into consideration all of the operation conditions and the physical configuration of the Industrial User facility.

What significant changes were made to the proposed rule?

EPA did not make significant changes to the proposed rule. The changes made from the proposal to the final rule include minor wording changes, a clarification to compositing methods, the reinstatement of a sentence that was removed in the proposal, and the removal of a sentence from the proposal.

The changes (other than minor wording changes intended to provide clarification) are as follows:

The following sentence, which had been deleted in the proposal, is returned to the regulations: "The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements." (EPA notes that non-significant CIUs (NSCIUs) may satisfy this requirement through certification.) This sentence had been taken out in the proposed rule. However, because the sentence adds clarity, EPA has decided to retain it. The rationale is discussed in the response to comments section below.

The following sentences at 40 CFR 403.12(g)(3) were removed from the regulations: "For those Industrial User Discharges subject to categorical Pretreatment Standards that do not operate on a 24-hour per day schedule, the samples must be collected at equally spaced intervals during the period that process wastewater is being discharged. Multiple grab samples for cyanide and volatile organic compounds that are collected during a 24-hour period may be composited in the laboratory prior to analysis using protocols specified in 40 CFR Part 136 and appropriate EPA guidance." The rationale is discussed in the response to comments section below.

For parameters that require grab sampling, EPA explicitly states which parameters may be composited in the field and the laboratory and which parameters may only be composited in the laboratory. This addition further clarifies the issue of compositing for samples that require collection by grab methods in order to preserve sample integrity.

4. Summary of Major Comments and EPA Response

Commenters were generally supportive of the sampling changes that EPA proposed. Some of the comments requested further clarification of issues. The following section summarizes EPA's response to these comments.

Will the final rule on compositing increase workload for sampling personnel? A commenter stated that manually compositing cyanide and volatile organics samples should be avoided for sample integrity and workload increase.

Regardless of whether multiple grab samples are individually analyzed or composited, samples must be properly preserved. Therefore, any workload change will likely occur at the laboratory, and increased workload for compositing the sample would be offset by decreased workload for analysis. EPA further clarifies in the final rule which parameters currently may be composited in the laboratory and which ones may be composited in the field. Under the current EPA-approved methods, oil and grease, and volatile organics may only be composited in the laboratory. Whether samples are composited in the lab or the field, sample integrity must be preserved, including preserving each grab sample in accordance with 40 CFR Part 136.

May Industrial Users determine the appropriate sampling flexibility without Control Authority approval? Industrial Users commented that EPA should give more flexibility to Industrial Users to determine what sampling schemes are appropriate for their facility. EPA disagrees. Control Authorities are responsible for ensuring that compliance samples are taken with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions as required by 40 CFR 403.8(f)(2)(vii) and for ensuring compliance by IUs with Pretreatment Standards and Requirements. To the extent that sampling is representative of the Discharge, the Control Authorities will be able to determine the appropriate sampling flexibility. The Control Authorities retain the responsibility for documenting site-specific circumstances and allowing alternate sampling by including the alternate sampling in the Industrial User control mechanisms.

May Control Authorities determine the appropriate number of grab samples for baseline monitoring and 90-day compliance reports? EPA requested comment on whether Control Authorities should be allowed the flexibility to determine the appropriate number of grab samples required to meet baseline monitoring and 90-day compliance report requirements for facilities without historical sampling data. Commenters supported the proposal to eliminate the requirement that a minimum of four grab samples be taken to measure pH, cyanide, total phenols, oil and grease, sulfides, and volatile organic compounds. Commenters stated that Control Authorities should be given flexibility to determine the appropriate number of grab samples required to meet reporting requirements, but did not provide concrete reasons as to how this would ensure that the sampling was representative of the Discharge.

EPA stresses that the flexibility should only be provided to the extent that the sampling is representative. The Control Authority will be responsible for documenting site-specific circumstances and allowing alternate sampling in the Industrial User control mechanisms. Baseline Monitoring Reports (BMRs) will likely provide the first samples for a parameter, and 90-day compliance reports will provide samples after any treatment has been added. Therefore, it is likely that at a minimum this data will be needed in order to document that alternative sampling is representative. Because it is unlikely that a Control Authority could properly document that sampling is representative without data from BMRs and 90-day compliance reports, EPA retains the requirement for a minimum of four grab samples for BMRs and 90-day compliance reports in order to document potential future sampling decisions for new facilities. For existing facilities where there is historic data representative of the current Discharge, Control Authorities may authorize a lower minimum number of grab samples for pH, cyanide, total phenols, oil and grease, sulfides, and volatile organic compounds. Of course, where there has

been a change to existing facilities, for example, the addition of treatment, historic data that does not represent the current Discharge would not be able to be used to justify a lower minimum of grab samples.

As stated previously, Control Authorities must ensure that compliance samples are taken with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions as required by 40 CFR 403.8(f)(2)(vii). To further strengthen this point, the following sentence, which the proposed rule would have deleted, is retained in 40 CFR 403.12(g)(3): "The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements." Sampling and analysis techniques must yield analytical data that is representative of the Discharge. The Control Authority will still need to document how alternate sampling techniques are representative of the Discharge, and may require that more than four grab samples be taken and separately analyzed to ensure that sampling is representative. Where the Control Authority cannot verify that previous techniques were representative, such data will not support the use of this alternative practice. EPA notes that "non-significant CIUs" (discussed in Section III.K of the final rule) may be authorized to substitute annual certification for sampling and analysis. See 40 CFR 403.12(q).

Will EPA define "representative" sampling in the rule? Commenters noted that the rules repetitively use the concept of "representative" samples, but do not precisely define what the samples are supposed to represent. In the proposed rule preamble (64 FR 39582, July 22, 1999), EPA indicated that it would not offer a comprehensive definition of what constitutes a "representative sample" or specific guidance. EPA is not defining "representative sample" in the final rule. Guidance on the subject may be found in Industrial User Inspection and Sampling Manual for POTWs (EPA, 1994, *http://www.epa.gov/npdes/pubs/owm0025.pdf*).

Sampling methods to yield a representative sample may vary depending on the site-specific situations of an individual discharger and the parameter that must be analyzed. Issues for the Control Authority to consider and document in prescribing sampling protocols include: (1) The appropriate sampling period (e.g., 24 hours or during the period of discharge); (2) use of flow proportional versus time-proportional methods; (3) use of grab samples versus composite samples; (4) use of grab samples for pH monitoring; (5) use of grab samples for degradable and volatile parameters; (6) allowing manual compositing of samples when the methodology is approved by EPA; and (7) applying the criteria to instantaneous, daily maximum, and monthly average limits.

Is EPA providing further clarifying language for collection of samples during process wastewater Discharges in the final rule? A commenter asked EPA to clarify whether a sample taken during a 24-hour period must be taken during a calendar day, or whether a sample may be taken over the course of two days. For example, if a facility discharges 24 hours per day, must the sample be taken from midnight to midnight, or may it be taken for other twenty-four hour periods (e.g., noon to noon)?

EPA interprets a "day" to be a 24-hour period and does not require that it occur within a calendar day. This is consistent with the definition for "daily discharge" in the NPDES regulations at 40 CFR 122.2. Daily discharge means the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day. This is existing policy and was not proposed to be modified in the rule, and therefore has not been added to the final rule. EPA recognizes that Control Authorities may define a more specific sampling period.

Another commenter asked for EPA to clarify whether a sample may be taken over the course of two calendar days in other circumstances. For example, if a facility discharges from 7 a.m. to 7 p.m., must a sample be taken from 7 a.m. to 7 p.m., or may a sample be taken from noon on one day to noon on the next day so long as only regulated wastewater is sampled? In the example provided, the sampling for compliance would need to be representative of the categorical process Discharge, and would need to account for other factors such as ensuring that stagnant water is not sampled if the facility is not discharging, and that process wastewater is not being discharged during the 7 p.m. to 7 a.m. period (for instance in an overtime situation). Where a sampler is placed from noon to noon, and wastewater samples (with volume proportionate to Discharge) are only collected during the discharge period (e.g., there is not a process wastewater Discharge, and no samples are collected from 7 p.m. to 7 a.m.), and the samples are properly preserved, then it is likely that the sample would be appropriate for use to determine compliance during a 24-hour period. Since this example addresses a site-specific situation, EPA is not inclined to revise the rule to address one particular set of circumstances. While other industries may have similar situations, the Control Authorities will need to consider all of the site-specific circumstances in detailing the sampling requirements for the facility in the individual Industrial User's control mechanism.

A commenter expressed concern with the proposed language pertaining to required sampling periods. The section originally clearly pertained only to sampling required for reporting under subsections 40 CFR 403.12(b), (d) and (e), of all categorical streams. As revised in the proposal, the requirements also apply to reports required under subsection (h) as well as to all other non-categorical waste streams. The commenter stated that the discussion in the preamble to the proposed rule seemed to indicate these very specific requirements only apply to categorically regulated wastestreams. However, the commenter indicated that this intent was not adequately stated in the regulation itself.

The commenter went on to state, "Local limits are developed based on total daily average influent loadings and total daily flows from all sources tributary to the receiving treatment plant. Many IUs, particularly larger ones, will have wastewater flows, from sources such as cooling systems, boilers, etc. that continue throughout the 24-hour day, as well as flows from maintenance and clean-up activities that often occur during non-process periods. In some cases, continuing composite sampling during these 'off-process' periods may, in fact, reduce the daily average concentration of a pollutant. In other cases, pollutant Discharges during maintenance or clean-up activities, may contribute higher levels of pollutants than during normal processing periods. In either case, to determine compliance with local limits, it seems sampling should be conducted throughout the period of discharge, regardless of whether or not 'process' operations are occurring the entire time."

In response, EPA removed the sentence from the proposed rule that read, "For those Industrial User Discharges subject to categorical Pretreatment Standards that do not operate on a 24-hour per day schedule, the samples must be collected at equally spaced intervals during the period that process wastewater is being discharged." It would be too complicated to try to address all local limits variations in this section of the regulation, and as indicated by the commenter, the proposed language did not clarify the issue.

G. Significant Noncompliance Criteria (40 CFR 403.8(f)(2)(viii))

1. What were the rules in effect prior to today's rule?

How is "Significant Noncompliance" (SNC) currently defined?

The previous 40 CFR 403.8(f)(2)(vii) defined "Significant noncompliance" (SNC), as it applies to Industrial Users to include violations that meet one or more of eight criteria. The criteria are: (1) Chronic violations of Discharge limits (where 66 percent or more of all measurements taken for the same pollutant parameter during a six-month period exceed the daily maximum limit or the average limit); (2) Technical Review Criteria (TRC) violations (where 33 percent or more of all measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals 1.4 for BOD, TSS, fats, oil and grease and 1.2 for all other pollutants except pH)); (3) any other violation of a Pretreatment effluent limit that the Control Authority determines has caused, alone or in combination with other Discharges, Interference or Pass Through; (4) any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge; (5) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for certain activities; (6) failure to provide required reports within 30 days after the due date; (7) failure to accurately report noncompliance; and (8) any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local Pretreatment Program.

What are the background and purpose of the SNC criteria?

On July 24, 1990, EPA modified 40 CFR 403.8(f)(2)(vii) to include the existing definition of SNC (55 FR 30082). The purpose of this modification was to provide some certainty and consistency among POTWs for publishing their lists of Industrial Users in significant noncompliance. EPA modeled the modification after the criteria under the NPDES program used to determine SNC violations for direct dischargers. By making the modifications, EPA also established more parity in tracking violations by direct and indirect dischargers.

What happens when an Industrial User facility is in SNC?

POTWs are required to publish annually a list of Industrial Users in SNC at any time during the previous twelve months. In the previous rules, the POTW was required to publish this list in the largest daily newspaper published in the municipality in which the POTW is located.

The Agency has emphasized that Industrial Users are liable for any violation of applicable Pretreatment Standards and Requirements, and has strongly encouraged Control Authorities to take some type of enforcement response for each such instance of noncompliance. Supporting this approach, EPA notes that the very underlying premise of the Enforcement Response Plan (40 CFR 403.8(f)(5)) is that there be some type of POTW response for each instance of noncompliance. Appropriate types of enforcement responses are addressed in the POTW's Enforcement Response Plan, although EPA guidance recommends that violations rising to the level of SNC be met with some type of formal enforcement action like an enforceable order (Guidance For Developing Control Authority Enforcement Response Plans, EPA 832–B–89–102, September 1989, (see *http://www.epa.gov/npdes/pubs/owm0015.pdf.*)

2. What changes did EPA propose?

EPA proposed the following modifications to the SNC provision in 1999:

a. Publication

EPA proposed to amend the previous 40 CFR 403.8(f)(2)(vii) to allow publication of the SNC list in any paper of general circulation within the jurisdiction served by the POTW that provides meaningful public notice rather than in the largest daily newspaper published in the municipality as is currently required.

b. Applicability

EPA proposed to amend the SNC criteria to apply only to Significant Industrial Users (SIUs). Under the existing regulations, SNC can apply to any Industrial User.

c. Daily Maximum or Average Limit Violations

EPA proposed to amend the previous 40 CFR 403.8(f)(2)(vii)(A), (B), and (C) to include a broader set of violations than just daily maximum and average limits.

d. Other Issues

EPA also took comment on several other issues, but did not propose specific changes. These issues include Technical Review Criteria (TRC), late reports, and rolling quarters.

3. What changes is EPA finalizing in today's rule?

EPA is finalizing four changes to amend 40 CFR 403.8(f)(2)(vii).

a. Publication

EPA is amending 40 CFR 403.8(f)(2)(vii) (now 40 CFR 403.8(f)(2)(viii)) to allow publication of the SNC list in any paper of general circulation that provides meaningful public notice within the jurisdiction served by the POTW. EPA's intent in modifying this requirement is to be consistent with the July 17, 1997 amendments to Part 403 regarding modifying POTW Pretreatment Programs (62 FR 38406). Under the amended 40 CFR 403.11(b)(1)(i)(B), publication can be in any paper of general circulation within the jurisdiction served by the POTW that provides public notice. It is EPA's view that this new performance standard for publishing SNC violations properly balances the need to give the POTW the flexibility to choose an appropriate newspaper within its community, with the need to ensure effective public notice and deterrence of "bad actors."

b. Applicability

EPA is amending the SNC criteria so that SNC will apply only to SIUs and to those Industrial Users that have caused Pass Through or Interference, have a Discharge that resulted in the POTW's exercise of its emergency authority to halt or prevent such a Discharge, have caused imminent endangerment to human health, welfare, or the environment, or have otherwise adversely affected the POTW's ability to operate its Pretreatment program. This approach is consistent with the NPDES

SNC policy which only applies to major dischargers. See "Revision of NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Non-Monthly Average Limits," memorandum from Steven A. Herman, Assistant Administrator for the Office of Enforcement and Compliance Assurance, September 21, 1995. Additionally, EPA emphasizes that the SNC criteria apply not only to SIUs, but also to IUs that cause significant adverse impacts to the POTW, human health or the environment. These modifications should cut down on administrative burdens and allow better resource targeting. These modifications ensure the POTW's ability to address all potentially problematic Users adequately. The Agency wants to make it clear that this change is focused only on the POTW's publication and reporting requirements. EPA fully expects POTWs to take appropriate enforcement actions against any Industrial User that violates a Pretreatment Standard or requirement. POTWs still have the option of publishing non-significant Industrial Users with violations that do not fall within one of the above-mentioned categories.

c. Daily Maximum or Average Limitations

EPA is amending 40 CFR 403.8(f)(2)(vii)(A) and (B) (now 40 CFR 403.8(f)(2)(viii)(A) and (B)) to apply to a broader range of violations such as other numeric limits, instantaneous limits, narrative limits, or operational standards, and amending 40 CFR 403.8(f)(2)(vii)(C) (now 40 CFR 403.8(f)(2)(viii)(C)) to address other Pretreatment Standards and requirements. This change is important since some local limits may be expressed as instantaneous limits or narrative limits. The revised language addresses other types of requirements like operational standards. The amendment is generally consistent with EPA's revision to its NPDES SNC policy where EPA broadened the criteria to address non-monthly average limitations. See "Revision of NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Non-Monthly Average Limits," memorandum from Steven A. Herman, Assistant Administrator for the Office of Enforcement and Compliance Assurance, September 21, 1995.

d. Late Reports

EPA is amending 40 CFR 403.8(f)(2)(vii)(F) (now 40 CFR 403.8(f)(2)(viii)(F)) so that SNC applies to reports that are provided more than 45 days after the due date, instead of to reports that are 30 days late. The change applies to required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules. EPA is making this change because many Control Authorities and Industrial Users that commented on the late report issue argued that the 30-day timeframe was too restrictive. EPA notes that Industrial Users that submit reports even one day late are in violation.

4. What significant changes were made to the proposed rule?

a. Applicability

EPA modified the proposal by adding to the scope of SNC those non-significant IUs that cause Pass Through or Interference, have a Discharge that resulted in the POTW's exercise of its emergency authority to halt or prevent such a Discharge, cause imminent endangerment to human health, welfare, or the environment, or otherwise adversely affect the POTW's ability to operate its Pretreatment program.

b. Daily Maximum or Average Limit Violations

In the proposal, EPA proposed to modify the provisions of the then current 40 CFR 403.8(f)(2)(vii)(A), (B) and (C) (now 40 CFR 403.8(f)(2)(viii)(A), (B) and (C)) to address not only violations of daily maximum or longer-term average limits, but also a broader range of violations such as other numeric limits, instantaneous limits, narrative limits, or operational Standards. EPA has modified the proposal in the following ways:

Chronic violations (40 CFR 403.8(f)(2)(viii)(A): EPA has clarified the revised language to more accurately describe the target violations. The term "numeric" was added to clarify that only Standards or Requirements that can be numerically quantified can be examined for possible chronic violations. Also, EPA specifies that chronic violations include violations of both "Standards and Requirements'; the term "Requirements" was not included in the proposal. The inclusion of this term provides the intended broader scope that EPA sought in the proposal. EPA also clarifies that violations of instantaneous limits are also to be considered for chronic violations.

During the process of revising the chronic and TRC violations provision, EPA found the difference between the use of the phrase "for the same pollutant parameter" for chronic violations, and the phrase "for each pollutant parameter" for TRC violations, may have led to some unintended misinterpretation. It is EPA's intention that the chronic and TRC criteria be applied to the "same pollutant parameter." To avoid potential confusion, EPA modified both the chronic and TRC provisions to use the same phrase (*i.e.*, for the same pollutant parameter), and to place the phrase in the most appropriate place in the provision to improve its clarity.

TRC (40 CFR 403.8(f)(2)(viii)(B): EPA adopted the same changes for TRC violations that were made for chronic violations.

Any other violations: EPA has modified the proposed rule by including clarifying language on what is meant by a "Pretreatment Standard or Requirement." EPA provides parenthetical examples, including daily maximum, long-term average, instantaneous, or narrative Standards.

c. Late Reports

EPA did not propose any changes to the then current 40 CFR 403.8(f)(2)(vii)(F) (now 40 CFR 403.8(f)(2)(viii)(F)), which contains the SNC criterion for late reports. Instead, EPA sought comments on several options for the late report criterion. The options included tying SNC to a pattern of late reporting; applying the SNC criterion to a late report only if the report indicated that a violation of monitoring requirements or numeric limitations had occurred; allowing POTWs to extend "waivers" in some circumstances to Industrial Users that offered a satisfactory reason why reports were late; limiting the types of reports to which the SNC criterion applies; retaining the 30-day late report criterion, but changing the publication requirement as it pertains to late reports; extending the time after which a late report puts an Industrial User in SNC (*e.g.*, to 45 days or 60 days); or providing the POTW with complete authority for determining when late reports trigger SNC. EPA is amending the criterion so that Industrial Users are in SNC if reports are not provided within 45 days after their due date.

5. Summary of Major Comments and EPA Response

a. Publication

Most commenters were in favor of making the change that EPA is adopting in today's rule. EPA is amending the regulation to allow publication of the SNC list in any paper of general circulation that provides meaningful public notice within the jurisdiction served by the POTW. One reason given

for supporting this change included possible lower costs to the municipality. Other commenters pointed out that the previous use of the largest daily newspaper requirement did not make sense in certain situations. Such examples included that the largest daily newspaper may not always have provided the most effective notice, and the fact that some municipalities may only have a weekly publication and no daily publication.

EPA also sought comment on an appropriate definition for "meaningful public notice" to ensure some level of consistency across the Pretreatment programs. Some commenters provided suggestions for defining "meaningful public notice" such as linking it to the service area population, the circulation rate of the newspaper, or the official daily newspaper as determined by the Control Authority. Other commenters stated that the definition of "meaningful public notice" should be determined by the Control Authority because defining it by service population or circulation rate could be overly burdensome and not necessarily meet the intent of the Standard. EPA agrees with the commenters who suggested that defining "meaningful public notice" could be overly burdensome. Therefore, at this time, EPA has decided not to define "meaningful public notice."

b. Applicability

The majority of commenters supported either modifying the application of SNC to SIUs only, or to SIUs and those Industrial Users which caused Pass Through or Interference, had a Discharge that resulted in the POTW's exercise of its emergency authority to halt or prevent such a Discharge, caused imminent endangerment to human health, welfare, or the environment, or otherwise adversely affected the POTW's ability to operate its Pretreatment program. Some commenters did not want to limit SNC to apply only to SIUs because not all Industrial Users which should be are properly identified as SIUs. The commenters also noted that all Industrial Users are required to comply with Pretreatment Standards and Requirements, regardless of whether they are designated as SIUs. (Several commenters also indicated that changing the SNC definition to apply only to SIUs would be unfair, because, with such a change, this definition would no longer apply to other Industrial Users that could cause the same types of impacts as SIUs.) EPA agrees that certain non-Significant Industrial Users should continue to be covered under the SNC provisions. By including the application of SNC to SIUs and those Industrial Users which cause the specific problems referenced above, the rule should address the commenters' concerns.

The distinction EPA is making today is not focused on the size of the facility; rather, EPA focuses on those dischargers with the largest potential to impact the system. EPA continues to strongly encourage POTWs to use their existing authority under what will now be codified as 40 CFR 403.3(v) to designate any Industrial Users as significant if they have the reasonable potential to adversely affect the POTW's operation or to violate any Pretreatment Standard or Requirement. This includes considering smaller facilities that have the potential (either individually or collectively) to impact the system. Furthermore, all Industrial Users are required to comply with Pretreatment Standards and Requirements, regardless of whether they are designated as SIUs, and EPA expects appropriate enforcement to be taken for each violation by any Industrial User.

c. Daily Maximum or Average Limit Violations

Commenters were divided on this proposed rule language. One commenter mentioned that the revision would be much more consistent nationally if it were to apply only to numeric categorical Pretreatment Standards. Another commenter indicated that the Control Authorities often are required to make "subjective judgments regarding compliance with narrative Standards, instantaneous limits and some general prohibitions," and that such a subjective judgment would be an inappropriate basis for an SNC determination. Another commenter indicated that all applicable Pretreatment Standards are enforced now, and that there would be no discernible benefit to expanding the types of violations that could trigger a SNC determination. Some commenters cited the possible increased burden on the Control Authorities if such additional Standards were used to make SNC determinations.

On the other hand, several commenters were supportive of the proposed rule change. Some commenters indicated that the revision would better reflect the fact that Industrial Users must be in compliance with all applicable Pretreatment Standards and requirements in order to meet the goals of the national Pretreatment program. Other commenters focused on the fact that Interference or pass-through could be caused by violations of Standards other than categorical Pretreatment Standards, and therefore they saw a need to expand the SNC criteria.

EPA agrees with those commenters who supported an expansion of the range of SNC criteria consistent with the proposed rule, and has added other numeric limits, instantaneous limits, narrative Standards, or operational Standards as part of the SNC criteria. This approach will give more equal weight to categorical Standards, local limits, and other Standards as applicable Pretreatment Standards and Requirements. This expansion of SNC criteria would also potentially enhance the Control Authority's ability to address such violations (*i.e.*, other numeric limits, instantaneous limits, narrative Standards, or operational Standards) by placing a higher priority on these violations. EPA has concluded that such a change would still provide national consistency and be more protective by better ensuring compliance with all applicable Pretreatment Standards and Requirements. Control Authorities are currently expected to address violations of all applicable Pretreatment Standards and Requirements, so that this proposal should not necessarily impose any increased enforcement responsibilities on the Control Authorities. In addition, as the preamble to the proposed rule states (64 FR 39593), this approach would be consistent with "EPA's recent revision to its NPDES SNC policy where EPA broadened the criteria to address non-monthly average limit violations." See "Revision of NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Non-Monthly Average Limits," memorandum from Steven A. Herman, Assistant Administrator for the Office of Enforcement and Compliance Assurance, September 21, 1995.

Under the NPDES SNC policy, when a parameter has both a monthly average and a non-monthly average limit, a facility is only considered in SNC for the non-monthly average if the monthly average is also violated to some degree (but less than SNC). EPA sought comment on whether such a caveat is also appropriate for the Pretreatment Regulations. Very few commenters focused on this particular topic. A few commenters indicated that a determination that a particular violation or set of violations constituted SNC should only occur if there was a meaningful violation of the POTW's NPDES Permit limit for that particular parameter. In the absence of significant comment and in recognition that effluent violations other than monthly average violations could have significant impacts on the POTWs, EPA

has decided not to modify the regulations to restrict SNC for violations of non-monthly averages.

d. Technical Review Criteria (TRC)

In the existing regulations, the Technical Review Criteria (TRC) may be found at 40 CFR 403.8(f)(2)(vii)(B) (now found at 40 CFR 403.8(f)(2)(viii)(B)). As described in the preamble to the proposed rule (64 FR 39593), these TRC "* * * are numeric thresholds used to define a subcategory of SNC * * * based on the magnitude of an effluent violation. A TRC violation occurs where 33 percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC." TRC is equal to 1.4 times the applicable Standard for BOD, TSS, fats, oils and grease; TRC is also equal to 1.2 times the applicable Standard for all other pollutants except pH.

As further stated in the preamble to the proposed rule (64 FR 39593), EPA was not proposing to amend the TRC. However, EPA did seek comment on this topic, particularly regarding local limits. EPA stated that it was "* * * interested in suggestions for workable alternatives * * * that would ensure that the magnitude of a violation * * *" continues to be part of the definition of SNC, with the condition that such alternatives "* * * would not unduly increase the workload on either the Control Authority or the Approval Authority." Based on its review of the comments, EPA is not considering any further changes to TRC.

Several commenters expressed a clear preference that TRC not be modified. Several commenters also provided alternative numeric thresholds for TRC. However, there was no consensus among the comments for an alternate threshold and a sufficient justification for the use of such alternative thresholds was not provided. As explained in the preamble to the proposed rule (64 FR 39593), the existing regulations are "consistent with the NPDES approach which has generally been accepted over the years as an indicator of a 'significant' level of exceedance which should be reviewed for enforcement purposes." Furthermore, as that same preamble stated, "(T)he same considerations apply to the TRC as it is applied to categorical Standards in the Pretreatment program and may be relevant for local limits." In a sense, by keeping the TRC the same for both direct dischargers to surface waters and indirect dischargers to POTWs, the criteria help maintain a "level playing field" by ensuring that this subcategory of SNC is linked to some nationally-consistent designated magnitude above the applicable Standard, whether that Standard is an NPDES Permit effluent limit, a categorical Pretreatment Standard, or a local limit.

Several commenters, using similar language, stated that "it is incumbent on EPA to develop TRC that are germane to the objectives of the Pretreatment program, developed in a manner that lends credence to application of effluent guidelines and local limits, and are technically sound and defensible." Just as best achievable technology Standards (BAT) and stream use are factors considered in the development of effluent limits, BAT and protection of the POTW's operations are factors considered in the establishment of categorical Pretreatment Standards and local limits respectively. Therefore, if these Pretreatment limits are properly derived for their intended purpose, the TRC are simply intended to represent numeric thresholds at magnitudes above these applicable Standards such that, above this level, such significant non-compliance should make the authority sufficiently concerned and warrant appropriate action. As such, EPA concludes that there is not sufficient reason to try to account only for instances of potential Pass Through or Interference, or to make allowances for the range of treatment plant performance, or to have different TRC for individual pollutant parameters for different POTWs. Such revisions would be contrary to EPA's intent to keep the regulations simple to understand and implement, and to not unduly increase the workload on the Control Authority or Approval Authority.

Some of the commenters advocated the elimination of the TRC entirely. EPA disagrees with these commenters. As indicated above, EPA asserts that a measure of the magnitude of the violation is an appropriate consideration in determining SNC. The preamble to the proposed rule (64 FR 39593) stated that EPA was not proposing to amend the TRC, and EPA believes that radical revisions to the TRC are not warranted.

One commenter indicated that TRC should only apply if the levels are at least five times the applicable Standard. EPA concludes that this level is far too high a threshold to serve as a proper deterrent to dischargers and as an adequate indicator of potential compliance problems. EPA emphasizes that POTWs should be concerned about reported results, the adequacy of industrial treatment, and potential impacts on the plant operations or receiving waters at levels which are much less than five times the applicable Standard.

Some commenters sought to adjust the TRC by having them only apply to daily maximum limitations. Other commenters suggested that for the violations to rise to the level of SNC EPA modify the percentages for TRC and chronic criteria from 33 to 34% and from 66 to 67% of all measurements taken, respectively. EPA disagrees with these commenters, because it is not clear how these changes will improve the application of TRC or provide equal if not added environmental protection when compared to the existing TRC criteria.

As stated above and in the preamble to the proposed rule (64 FR 39593), EPA did seek comment on the TRC, particularly regarding local limits. No commenters focused on whether TRC may be inappropriate for local limits, based upon a distinction in the derivation, site-specific variability and intent of local limits as compared to categorical Pretreatment Standards. Therefore, EPA did not adopt changes to reflect the use of TRC for local limits.

e. Late Reports

The existing regulations require that Industrial Users that submitted reports more than 30 days late be considered in SNC. This is consistent with the NPDES SNC approach for late reports. EPA did not propose any specific changes to this part of the SNC definition, but did solicit comment on possible options or combinations of options to modify this portion of the definition. The options included tying SNC to a pattern of late reporting; applying the SNC criterion to a late report only if the report indicated that a violation of monitoring requirements or numeric limitations had occurred; allowing POTWs to extend "waivers" in some circumstances to Industrial Users that offered a satisfactory reason why reports were late; limiting the types of reports to which the SNC criterion applies; retaining the 30-day late report criterion, but changing the publication requirement as it pertains to late reports; extending the time after which a late report puts an Industrial User in SNC (*e.g.*, to 45 days or 60 days); or providing POTWs with complete flexibility for determining when late reports trigger SNC.

Comments on this issue were mixed. Many commenters noted that reporting is important in and of itself and it serves a vital role in ensuring adequate implementation and oversight of the Pretreatment program. Commenters

noted that failure to submit or late submittal of reports impede POTWs from meeting goals of their approved programs. Because of the importance of reporting, a few commenters (POTWs) argued that EPA should retain the existing SNC criterion for late reports.

However, a majority of commenters asked EPA to modify the SNC criterion for late reports in some way. They noted that reports are sometimes late because of circumstances that are beyond the control of the Industrial Users. Commenters also stated that publication should be reserved to Industrial Users that violate numeric Pretreatment Standards or fail to monitor, rather than for violations that some commenters characterized as "administrative" violations. One commenter also noted that a 30-day criterion may be appropriate for NPDES permittees, but not for the Pretreatment Program because NPDES permittees generally submit reports more frequently than Industrial Users regulated by the Pretreatment Program and because the Pretreatment Program also relies on surveillance by the POTWs. Based on these comments, EPA agrees that modifications to the SNC criterion for late reports are appropriate.

Although most commenters favored modifications to the SNC criterion for late reports, commenters disagreed on how the provision should be modified. Some commenters stated that POTWs should be given complete flexibility in determining whether late reports constitute SNC. Others argued that POTWs should be provided some amount of flexibility, but not total flexibility. It is EPA's position that the definition of SNC should be consistent throughout the Pretreatment Program. Therefore, the Agency has chosen to establish a consistent SNC criterion for late reports that would avoid the use of different SNC criterion by various POTWs for the same type of reporting violations.

Some commenters suggested that the SNC criterion for late reports should recognize a pattern of late reporting, or should consider the Industrial User's compliance history. For example, some commenters suggested that a late reporter be considered in SNC if 33 percent or more of required reports in a specified reporting period are provided more than 30 days late. Another commenter suggested that three monitoring reports submitted more than thirty days late could constitute a history of chronic late reports, and another commenter suggested that failure to submit a completed discharge monitoring report in any two months of any consecutive six month period should trigger SNC. EPA agrees that POTWs should take steps to address Industrial Users that demonstrate a pattern of late reporting. In addition, EPA strongly asserts that the SNC criterion for late reports must address reports that are submitted extremely late or that are never submitted, even if the extremely late submittal or failure to submit is a one-time occurrence.

Some commenters argued that SNC for late reports should apply only if the report, once submitted, indicates that the Industrial User has violated a numeric Pretreatment Standard or failed to monitor. Others supported a provision in which reports provided more than 30 days late, but less than 45 days, should trigger SNC only if they indicated another violation. EPA views this suggested change as potentially minimizing the importance of reporting as a tool for POTWs to implement local Pretreatment Programs. Also, EPA asserts that the SNC criterion for late reports must address reports that are submitted extremely late or that are never submitted, even if the extremely late submittal or failure to submit is a one-time occurrence and even if the report does not indicate monitoring or effluent violations.

A number of commenters supported extending the number of days until which late reports trigger SNC from 30 days to 45 days. EPA agrees that this change is appropriate and easy to implement. A few commenters suggested the option of extending the period from 30 days to 60 days. EPA has concluded that this change is not appropriate because most cases of late laboratory reports or other miscommunications can be addressed quickly. EPA also concludes that receiving data 60 days late would be more likely to jeopardize POTWs' management of their Pretreatment Programs and have the potential to adversely impact the POTW and its receiving water.

A few commenters suggested that the SNC criterion for late reports should only apply to periodic self-monitoring reports and 90-day self compliance reports. EPA asserts that, in order to avoid confusion and ease tracking of late reports, the same criterion should be applied to all reports. One commenter asked that EPA amend the regulations so that SNC for late reports applies to "baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, *or* reports on compliance with compliance schedules" (rather than "baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules"). The commenter was concerned that the provision could be interpreted to imply that Industrial Users must submit both the 90-day compliance reports and the periodic self-monitoring reports to avoid being in SNC. The list of reports comprises a list of examples of "compliance reports." EPA does not agree that changes are needed to this language, nor does the Agency find the commenter's arguments to be valid.

In considering revisions to the late reporting criterion for SNC, EPA notes that implementation of the Pretreatment Program relies heavily on a self-policing and self-reporting system. This self-reporting is important to enforcement. If a failure to report becomes routine, the entire program can be weakened. EPA expects POTWs to take some level of enforcement action against any Industrial User that provides late reports. EPA would also like to emphasize that there is current flexibility in the existing rule to address some of the concerns related to one late report putting an Industrial User in SNC. For example, the Control Authority has some flexibility in setting the due date and can set it to coincide with some other established reporting or billing cycle. Also, in the enforcement response policy the POTW can have an escalation policy, whereby, for example, the Industrial User would receive a warning letter that the report is 5–10 days late past the due date and/or fines associated with the report before it rises to the level of being in SNC.

f. Rolling Quarters

EPA memoranda circa 1991 and 1992 form the basis of EPA's policy that SNC for IUs should be calculated on a rolling quarter basis. (September 9, 1991 memorandum from Michael B. Cook, Director of EPA's Office of Wastewater Enforcement and Compliance to Water Management Division Directors, Regions I–X and approved Pretreatment State coordinators, "Application and Use of the Regulatory Definition of Significant Noncompliance for Industrial Users," *http://www.epa.gov/npdes/pubs/application_use_regulatory.pdf*, and January 17, 1992 memorandum from Mark B. Charles, Chief of RCRA and Pretreatment Enforcement Section, to the Regional Pretreatment Coordinators, Regions I–X, "Determining Industrial User Significant Noncompliance—One Page Summary," *http://www.epa.gov/npdes/pubs/industrial_user.pdf*). The term "rolling quarters," under EPA's national policy, refers to an approach which requires the Control Authority to evaluate an Industrial User's compliance status at the end of each

quarter by using data from the previous six-month period. In the regulations, determinations of significant noncompliance are based upon six-month periods (40 CFR 403.8(f)(2)(viii)(A) and (B)).

Many commenters expressed concern regarding the concept of rolling quarters and instead endorsed the adoption of static six-month periods that do not overlap. Many commenters were concerned that the use of rolling quarters could result in the need to publish the name of the Industrial User in two separate years for SNC for the same violation.

Many commenters who supported the static six-month approach voiced concerns that the use of rolling quarters unnecessarily complicated the calculations of SNC and the annual publication of those IUs in SNC, without apparent benefits over the use of static six-month periods. They indicated that the concept was complex, difficult to implement and would only result in confusion for the Industrial Users and increased burden for the control authorities.

Some commenters preferred to begin to "roll" time periods after a violation occurs, thus giving, as one commenter stated, the possibility to "* * * allow Industrial Users to achieve compliance and obtain additional samples" to verify compliance, all within the given time period. The commenters explained that this could give Industrial Users an opportunity to demonstrate compliance rather than being listed as being in SNC for violations that were corrected months ago. EPA noted in the preamble to the proposed rule (64 FR 39594, July 22, 1999) that while the Agency provided some discussion of the various opinions regarding the use of rolling quarters, EPA did not ultimately propose a specific change regarding rolling quarters national policy, did not seek comment on whether to discontinue EPA's national policy regarding the use of rolling quarters, and did not propose an alternative approach. It remains EPA's intention to continue the existing national policy that SNC for Industrial Users be evaluated on a rolling quarter basis. This approach, which is the same as the one used in the NPDES program for the determination of SNC by direct dischargers, will remain the same.

EPA did seek comment on whether the concept of rolling quarters should be codified in the Pretreatment Regulations. Some commenters expressed their opposition to such codification, based largely upon their preference to use an alternative to rolling quarters. A few commenters supported codification, indicating that by making the use of the rolling quarters approach mandatory, EPA would help ensure national consistency in its use by Control Authorities. One commenter recommended codification of the due date for the annual publication of Industrial Users in SNC. After considerable internal discussion and careful deliberation, EPA has decided not to codify rolling quarters in the Pretreatment Regulations.

In the preamble to the proposed rule (64 FR 39594, July 22, 1999), EPA specifically sought comment on whether the regulations should be revised to allow Control Authorities to waive the second publication (as described above) "where that second publication is based solely on the violations occurring in the last quarter of the previous Pretreatment year." Many commenters sought the elimination of this double publication issue through a specific rule change to the publication requirements, particularly if the final rule implements the concept of rolling quarters. Those commenters indicated that such duplicate publications in the newspaper would be unfair to the Industrial User which had corrected its compliance problems and would mislead the public regarding the status of such an Industrial User.

EPA's 1991 memorandum, cited previously, addressed the issue of possible publication in two different years of an Industrial User that is in SNC for the same violation. EPA was clear on the point that double publication is not intended by the use of rolling quarters. It stated that "(I)f a facility has been determined to be in SNC based solely on violations which occurred in the first quarter of the 15-month evaluation period (*i.e.*, the last quarter of the previous Pretreatment year) and the facility has demonstrated consistent compliance in the subsequent four quarters, then the POTW is not required to republish the Industrial User (IU) in the newspaper if the IU was published in the previous year for the same violations." It is EPA's position that no revisions are needed on this point. However, EPA wishes to clarify that a facility does not need to have full compliance to avoid double publication. Rather, if a facility was already determined to be in SNC during the previous pretreatment year, and the facility would not be in SNC in the current year but for violations occurring during the last three months of the previous year, then the facility is not considered in SNC for the current year.

H. Removal Credits—Compensation for Overflows (40 CFR 403.7(h))

1. General Background

Section 307(b) of the CWA which requires EPA to establish pretreatment standards also authorizes a discretionary program for POTWs to grant "removal credits" to their industrial users. The credit in the form of a less stringent categorical Pretreatment Standard would allow an Industrial User to discharge a greater quantity of a pollutant than would otherwise be authorized because the POTW's treatment processes sufficiently reduce the concentrations of the pollutant.

Section 307(b)(1) establishes a three-part test that a POTW must meet in order to obtain removal credit authority for a given pollutant. Removal credits may be authorized only if (1) the POTW "removes all or any part of such toxic pollutant," (2) the POTW's ultimate discharge would "not violate that effluent limitation or standard which would be applicable to that toxic pollutant if it were discharged" directly rather than through a POTW, and (3) the POTW's discharge would "not prevent sludge use and disposal by such [POTW] in accordance with section [405] * * *" (Sec. 307(b)). EPA promulgated removal credit regulations that are codified at 40 CFR 403.7 (See 43 FR 27736, 46 FR 9404, 49 FR 31212, and 52 FR 42434).

In this rulemaking, EPA proposed only one limited change to the removal credits provision of the General Pretreatment Regulations. A number of commenters, however, asked EPA to consider changes to the regulations to allow greater availability of removal credits for a broader range of pollutants. The Agency's current plans with respect to sewage sludge regulations and removal credits are discussed in detail in a Notice published today with this rule.

2. What are the existing rules governing how removal credit authority is affected by the occurrence of overflows in the POTW sewer system?

Section 403.7 of the General Pretreatment Regulations describes the conditions under which removal credits may be available to an Industrial User. Among other things, the regulation provides that, given certain conditions are met, a POTW may grant a removal credit to an Industrial User equal to or less than its consistent removal rate for that pollutant. The regulation defines "consistent removal rate." In circumstances where a POTW "annually Overflows" untreated wastewater to

receiving water, the POTW may claim consistent removal of the pollutant only under the conditions specified either in 40 CFR 403.7(h)(1) or (2). "Overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant.

Under subsection (h)(1), a POTW may claim consistent removal only if, for example, the POTW has established plans for notifying Industrial Users in the event of a potential overflow and the Industrial User has, among other things, taken certain actions to provide containment of, or ceases or reduces, its discharges of the pollutant for which the removal credit is sought. Alternatively, in subsection (h)(2), the current rule provides that consistent removal may be claimed under a mathematical formula that reduces consistent removal to take account of the Overflows so long as the POTW has taken steps required by an EPA guidance document on combined sewer overflows (CSOs) published on December 16, 1975 (*i.e.*, PRM 75–34). This latter requirement was intended to ensure that POTWs granting removal credits were taking appropriate steps to address CSOs as outlined in EPA's then-current guidance. Since then, EPA has adopted the CSO Control Policy with updated requirements for addressing CSOs. Section 402(q) of the CWA provides that all NPDES permits must be consistent with the CSO Control Policy.

3. What changes did EPA propose?

EPA proposed to make Industrial Users that are upstream of Overflows ineligible for removal credits unless they could establish that their discharges would be consistently treated. Consistent with that approach, the proposal would have deleted the existing provision in 40 CFR 403.7(h)(2) which allows removal credits for discharges that are subject to Overflows, but reduces the credit by a percentage equal to the percentage of time in a year that the POTW is subject to Overflows. In addition, references in the regulation to the now obsolete guidance on construction grants review procedures for developing CSO control were to be removed by deleting Appendix A as well as discussion of that guidance in 40 CFR 403.7(h)(2).

4. What changes is EPA finalizing in today's rule?

Today, EPA is limiting its action to updating the references to obsolete guidance published in 1975, for the construction grants program. Existing 40 CFR 403.7(h)(2)(ii) and (iii) and Appendix A are deleted and replaced with a requirement for the POTW to be in compliance with all NPDES permit requirements and other requirements in any orders or decrees issued pursuant to the 1994 CSO Control Policy. As noted above, CWA 40 CFR402(q) requires all NPDES permits to conform to this policy. The existing formula in 40 CFR 403.7(h)(2)(i) for adjusting removal credits based on the number of hours of Overflow discharges occurring in a year is retained.

EPA decided not to adopt the proposed revision which would have required that removal credits be limited to the percentage of the pollutant that was removed during the Overflow event. EPA does not have sufficient information to determine the impacts of such a change on existing programs using removal credits and is concerned that the adoption of this change may have disrupted these programs with little environmental benefit.

Today's rule also makes one technical correction in response to comments received. EPA corrects footnote 1 in Appendix G, Table l (Regulated Pollutants in Part 503 Eligible for a Removal Credit) by including a reference to the use of carbon monoxide. The Part 503 regulations now allow the use of either total hydrocarbon (THC) or carbon monoxide concentrations to represent organic compounds in exit gas from incinerators. EPA amended Part 503 subpart E (59 FR 9095, February 25, 1994) to authorize the demonstration of compliance with the 100 ppm THC operational standard by meeting a 100 ppm CO limit. Therefore, EPA is modifying footnote 1 to reflect the fact that either total hydrocarbon or carbon monoxide, as a surrogate monitoring parameter, may be used.

I. Miscellaneous Changes (40 CFR 403.12(g), (j), (l), and (m))

Signatory Requirements for Industrial User Reports and POTW Reports (40 CFR 403.12(l) and (m))

Today's rule revises the signatory requirements for Industrial Users at 40 CFR 403.12(l)(1)(ii) to adopt more flexible standards for determining who must sign reports on behalf of a corporation. EPA's NPDES regulations include similar requirements for NPDES Permits. See 40 CFR 122.22(a)(1)(ii). Today's amendments make similar changes to the signatory requirements for "duly authorized employees" of POTWs. See 40 CFR 403.12(m) and 122.22(a).

1. What were the rules in place prior to today's rulemaking?

Sections 403.12(l)(1)(ii) previously limited the circumstances in which a plant manager could sign a Pretreatment report as a responsible corporate officer. Prior to today's rule, in order to sign a report on behalf of a company, the manager was required to manage a facility with more than 250 employees or $25 million in sales or expenditures.

Section 403.12(i) addresses annual reporting requirements for POTWs. Prior to today's rule, 40 CFR 403.12(m) required these reports to be signed by "a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.' "

2. What changes did EPA propose?

EPA proposed to revise the signatory requirements for Industrial Users at 40 CFR 403.12(l)(1)(ii) to adopt the same language that EPA proposed in 1996 (61 FR 65268) and now uses for direct dischargers at 40 CFR 122.22(a)(1)(ii). On May 15, 2000, EPA finalized revisions to 40 CFR 122.22(a)(1)(ii) to replace the numeric criteria for designating an appropriate signer with more flexible narrative criteria (64 FR 39595). Rather than conditioning signature authority on resource management size, the revised criteria describe the necessary signer in terms of general management authority and responsibilities. The revised criteria require the manager to have the authority to make capital investment decisions and assure long term environmental compliance.

In addition, EPA also proposed to revise the signatory requirements for POTW reports at 40 CFR 403.12(m) so the requirement would be more consistent with signatory requirements in the current 40 CFR 122.22(a). EPA proposed to allow signature by a duly authorized employee having responsibility for the overall operation of the facility or activity such as the position of POTW Director, Plant Manager, or Pretreatment Program Manager. This authorization could be made in writing by the principal executive officer or ranking elected official, and submitted to the Approval Authority prior to the report being submitted.

3. What changes is EPA finalizing in today's rule?

In today's final rule, EPA adopts the proposed rule's changes. The following modifications to the proposed rule were made:

Duly Authorized Employee: The proposed rule provided examples of which POTW personnel could sign as a "duly authorized employee." EPA was concerned that the specific examples

given (*e.g.*, POTW Director, Plant Manager, or Pretreatment Program Manager) might have unintentionally limited the designation of "duly authorized employee" at a POTW in the case of an employee that did not have the same exact position title as any of the ones listed in the proposal. To avoid any confusion and provide intended flexibility, today's rule adopts the proposal's requirement that the duly authorized employee be "an individual or position having responsibility for the overall operation of the facility", yet simplifies the language by deleting the examples of specific POTW positions from the proposal.

Authorization for Duly Authorized Employee: EPA clarifies in today's rule that the POTW's authorization of a duly authorized employee to sign POTW reports can be submitted to the Approval Authority "together with" the next annual report. The proposal only provided the option of submitting such authorization "prior to" the annual POTW report.

4. Summary of Major Comments and EPA Response

The following is a summary of major comments received and EPA's response:

Do individuals previously authorized to sign POTW reports need to comply with the new "duly authorized representative" requirements? Several commenters observed that individuals currently signing POTW reports for their program, who may have been signing such reports for numerous years, would now need to receive Approval Authority approval prior to signing the next report after today's rule becomes effective. The commenter suggested that EPA add a grandfather provision which enables such individuals to continue signing POTW reports without having to comply with the "duly authorized representative" requirements at 40 CFR 403.12(m).

EPA has not adopted the commenter's suggestion. In EPA's view, the new language provides greater flexibility to POTWs than is currently provided by the Pretreatment Regulations and clarifies any uncertainty about which employees may be "duly authorized" to sign and submit Pretreatment reports. If the commenter chooses to continue its practice of delegating a duly authorized representative to sign relevant reports, this authorization, consistent with 40 CFR 403.12(m) "must be made in writing and submitted to the Approval Authority prior to or together with the report being submitted."

EPA notes that the proposed rule made it seem as if the Approval Authority's approval of duly authorized representatives needed to occur prior to the submission of the next report. Because this is inefficient for the POTW, EPA modified the proposed language in 40 CFR 403.12(m), to indicate that the POTW can request such approval either "prior to or together with" the POTW report being submitted. It is EPA's opinion that this change addresses the commenters' concerns about the inefficiency of waiting for approval from the Approval Authority before submitting a report. EPA sees no reason why the POTW's request to use a duly authorized employee signatory not be considered by the Approval Authority at the same time that it receives the POTW's report.

For Industrial User reports, why is EPA no longer requiring the signatory to be a high level person of authority ultimately responsible for the overall management of the business? One commenter disagreed with the change to 40 CFR 403.12(l) observing that the signatory should continue to be a high level person of authority who is ultimately responsible for the overall management of the business. EPA clarifies that today's rule merely provides greater flexibility in the type of "responsible corporate officer" who may sign reports on behalf of an Industrial User. The revised requirements do not significantly alter the type of official designated as signatory. The Industrial User is still given the same level of flexibility as existed prior to today's rule to choose between a responsible corporate officer, a general partner or proprietor, or a duly authorized representative.

Net/Gross Calculations (40 CFR 403.15)

Today's rule corrects an unintended error in the net/gross procedures for adjusting categorical Pretreatment Standards to reflect the presence of pollutants in the Industrial User's intake water. The error appeared to make the test for using these procedures unintentionally difficult to meet.

1. What were the rules in place prior to today's rulemaking?

Net/gross calculations allow pollutants in intake water to be considered when developing technology-based limitations. EPA modified 40 CFR 403.15, the section of the Pretreatment Regulations addressing net/gross calculations, in 1988 so that this provision would be consistent with the NPDES provision for net/gross which had been revised earlier. See discussion at 53 FR 40602–40605, October 17, 1988. The NPDES provision (40 CFR 122.45(g)) is an "or" test which allows net/gross adjustments either where effluent Standards are specified on a net basis or where control systems meet Standards in the absence of pollutants in the intake water. That is, meeting either condition allows consideration of adjustment. However, the actual language EPA used to modify 40 CFR 403.15 in 1988 erroneously used the term "and" instead of "or", thus inadvertently establishing a test in which both conditions would have to be met. As there are no categorical Standards which specify application on a net basis, this resulted in an unintended prohibition on the use of the net/gross provision in the Pretreatment Program.

2. What changes did EPA propose?

EPA proposed to revise the language in section 40 CFR 403.15 to be consistent with the NPDES regulations and with the intent of the 1988 modification. According to the proposal, categorical Pretreatment Standards could be adjusted on a "net" basis if either the applicable Pretreatment Standards allow for this calculation or the Industrial User demonstrates its control system meets those Pretreatment Standards.

3. What changes is EPA finalizing in today's rule?

EPA has adopted the proposed rule change. No modifications were made to the proposal in the final rule.

4. Summary of Major Comments and EPA Response

There were no significant comments on this proposed change.

Requirement To Report All Monitoring Data (40 CFR 403.12(g))

Today's rule updates a requirement for Categorical Industrial Users (CIUs) to report all monitoring data to reflect the fact that this provision should similarly apply to non-categorical SIUs, since both types of Users are required to submit monitoring reports to the Control Authority.

1. What were the rules in place prior to today's rule?

EPA changed 40 CFR 403.12(g) in 1988 (see 53 FR 40614, October 17, 1988) to require all monitoring by Industrial Users to be reported. This was done to avoid the situation in which an Industrial User that performs extra sampling might select the most favorable monitoring result to report to the Control Authority. At the time of this change, only CIUs were required by the regulations to report on a regular basis, and therefore, this requirement was limited to CIUs. In 1990, 40 CFR

403.12(h) was added to the regulations (see 55 FR 30131, July 24, 1990), requiring all non-categorical Significant Industrial Users to also sample and report. However, at the time this change was made, the regulations at 40 CFR 403.12(g) were not updated to require all SIUs, categorical and non-categorical, to report all monitoring results to the Control Authority.

2. What changes did EPA propose?

EPA proposed to change the Pretreatment Regulations to require all SIUs, both categorical and non-categorical SIUs, to report all monitoring results for regulated parameters at the point of compliance, obtained using procedures specified in Part 136, to the Control Authority.

3. What changes is EPA finalizing in today's rule?

EPA adopted the proposed rule change to 40 CFR 403.12(g)(6). No modifications were made to the proposal in the final rule.

4. Summary of Major Comments and EPA Response

Should non-SIUs be required to report all monitoring results? Two commenters suggested that EPA revise the scope of its provision to include all Industrial Users. While there are likely important reasons to apply this provision to non-SIUs on a case-by-case basis, EPA declines to do so in a requirement affecting all Pretreatment programs. First, EPA did not consider such a revision in the proposal, and it would be inappropriate to do so in this action. Second, while it may make sense to require reporting of all monitoring results for SIUs since they are already required to monitor and report to the POTW, non-SIUs are not currently required by the Pretreatment Regulations to monitor or report. Of course, POTWs may require non-SIUs to report all monitoring data to POTWs on a case-by-case basis if local laws allow. Such a decision is a matter of local discretion.

Notification by Industrial Users of Changed Discharge (40 CFR 403.12(j))

Today's rule clarifies that when the Industrial User provides notification of a changed Discharge it should go to the "Control Authority", or the Control Authority and the POTW, where the POTW does not have an approved Pretreatment program.

1. What were the rules in place prior to today's rule?

In 1988, the regulations were changed to add 40 CFR 403.12(j) (53 FR 40614, October 17, 1988) requiring all Industrial Users to promptly notify the POTW of any substantial change in volume or character of pollutants in the User's Discharge to the POTW. This notification requirement did not include the Control Authority, which, in some cases, is not the POTW.

2. What changes did EPA propose?

EPA proposed to expand the notification requirement in 40 CFR 403.12(j) so that the Industrial User must notify the "Control Authority", as opposed to the "POTW", and in cases where the Control Authority and the POTW are different organizations, the Industrial User would notify both the Control Authority and the POTW of any substantial change in volume or character of pollutants in the User's Discharge to the POTW.

3. What changes is EPA finalizing in today's rule?

EPA has adopted the proposed rule's revision of 40 CFR 403.12(j). No modifications were made to the proposal in the final rule.

4. Summary of Major Comments and EPA Response

There were no significant comments on this proposed change.

J. Equivalent Mass Limits for Concentration Limits (40 CFR 403.6(c)(5))

This section of today's final rule addresses the establishment of equivalent mass limits for concentration-based categorical Standards. EPA is finalizing provisions that allow Industrial Users to request (and, at their discretion, Control Authorities to approve) the conversion of concentration-based categorical limits to equivalent mass-based limits. The current rule requires that the Control Authority must control contributions to a POTW by all Significant Industrial Users (which include Categorical Industrial Users) through a Permit or equivalent individual control mechanism. See 40 CFR 403.3(t) (now found at 40 CFR 403.3(v)) and 40 CFR 403.8(f)(1)(iii). Today's change authorizes the Control Authority to calculate an equivalent mass limit for the Industrial User's Permit (or control mechanism) for those categorical Pretreatment Standards that are expressed in terms of concentration. Once inserted into the Industrial User's control mechanism, the equivalent limit replaces the promulgated concentration-based Pretreatment Standard. See 40 CFR 403.6(c)(7). The final rule includes requirements that an Industrial User must satisfy in order to qualify for this conversion. These include a requirement for the Industrial User to use water conservation methods and technologies during the term of the Industrial User's control mechanism. The rule also specifies the procedures which the Control Authority must follow in calculating the equivalent mass limit. After the equivalent mass limits are in effect, the rule conditions the continued use of the limits on the Industrial User's compliance with several requirements, including, at a minimum, the maintenance and effective operation of treatment technologies adequate to achieve compliance with the equivalent mass limits, the continuous recording of flow rates, the notification of the Control Authority where production is expected to be substantially changed, and the retention of water conservation measures.

1. What were the rules in place prior to today's rulemaking?

National categorical Pretreatment Standards establish different types of pollutant limitations for different categories. EPA has established categorical Pretreatment Standards that include the following types: (1) Concentration-based Standards that are implemented directly as concentration limits; (2) mass limits based on production rates; (3) both concentration-based and production-based limits; and (4) mass limits based on a concentration Standard multiplied by a facility's process wastewater flow. Currently, 40 CFR 403.6(c)(2) authorizes the Control Authority to convert production-based mass limits to equivalent daily mass limits or concentration limits. In addition, 40 CFR 403.6(d) allows the Control Authority to impose equivalent mass limits in addition to concentration-based Standards where the Industrial User is using dilution to meet applicable Pretreatment Standards or where the imposition of mass limits is appropriate. Under 40 CFR 403.6(d), both the mass limit and concentration limit are then enforceable, so the mass limit would not be an equivalent, "in-lieu-of" limit. The regulations do not currently, however, authorize establishment of alternative mass limitations in the case of concentration-based Standards except in the limited circumstances described in 40 CFR 403.6.

2. What changes did EPA propose?

EPA proposed to revise the Pretreatment Regulations to authorize the Control Authority to establish equivalent mass limits in lieu of

promulgated concentration-based limits for Industrial Users. The equivalent mass limit would only be available to Industrial Users that had installed control measures at least as effective as the model treatment technologies that serve as the basis for a particular categorical Pretreatment Standard and that are employing water conservation methods and technologies that substantially reduce water use. The Control Authority would be required to document how the equivalent mass limits were derived and make this information publicly available.

3. What changes is EPA finalizing in today's rule?

EPA is finalizing changes to enable Control Authorities in limited circumstances to express a concentration-based categorical Standard as an equivalent mass limit in a control mechanism issued to an Industrial User. The equivalent mass limit replaces the promulgated categorical Pretreatment Standard once it is incorporated into the Industrial User's control mechanism. To qualify for an equivalent mass limit, the CIU must meet certain eligibility conditions. These conditions require the CIU to: (1) Implement water conservation measures that substantially reduce water use; (2) use control and treatment technologies adequate to achieve compliance with categorical Pretreatment Standards, and demonstrate that it has not used dilution as a substitute for treatment; (3) provide monitoring data to establish its actual average daily flow rate and its baseline long-term average production rate; (4) demonstrate that it does not have daily flow rates, production rates, or pollutant levels that fluctuate so significantly that establishing equivalent mass limits would not be appropriate; and (5) have consistently complied with the applicable categorical Pretreatment Standards.

Under the final rule, while a CIU may request an equivalent limit, the Control Authority has the discretion to decide whether an equivalent mass limit is appropriate. If the Control Authority approves the request, it then calculates the equivalent mass limit by multiplying the promulgated Pretreatment Standard (expressed as concentration) by the Industrial User's actual average daily flow rate and the appropriate unit conversion factor. For example, the unit conversion factor is 8.34 when multiplying a concentration limit (expressed as milligrams/liter) by flow (expressed as millions of gallons per day). The CIU is subject to the equivalent mass limit when its control mechanism containing the mass limit is effective. During the term of the control mechanism, or in a subsequent control mechanism term, the Control Authority may determine that it is necessary to revise the mass limit to reflect a significant change in the rate of production. The Control Authority is not required to recalculate the equivalent mass limits in subsequent control mechanism terms if the actual average daily flow rates were reduced solely as a result of implementing water conservation methods and technologies, and the flow rates used in the original calculation of the equivalent mass limits were not based on the use of dilution as a substitute for treatment pursuant to 40 CFR 403.6(d), and the Industrial User is not bypassing its treatment technologies pursuant to 40 CFR 403.17.

After the Control Authority develops an equivalent mass limit and issues a control mechanism with the mass limits, the continued applicability of the equivalent mass limit depends on the Industrial User's continued compliance with certain requirements. To comply with these requirements, the Industrial User must: (1) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits; (2) record the facility's flow rates through the use of a continuous effluent flow monitoring device; (3) continue to record the facility's production rates and notify the Control Authority if the rates vary by more than 20 percent from the production rates used as the basis for the equivalent mass limits; and (4) continue to employ the same or comparable water conservation measures which made the facility eligible for receiving the equivalent mass limits. The Control Authority should consider including the four conditions listed above in the CIU's control mechanism to make it clear to all such Industrial Users that continued use of the equivalent mass limits is subject to ongoing compliance with these minimum requirements. Failure to comply with these conditions will disqualify the CIU from coverage by the equivalent mass limit. The pre-existing concentration-based Pretreatment Standards will be automatically enforceable at the time of disqualification.

Section 403.8(f)(1) requires that POTW Pretreatment Programs must have the legal authority to control the contribution to POTWs from each Industrial User to ensure compliance with Pretreatment Standards and other requirements. In the case of Significant Industrial Users, this control must be achieved through a Permit or other equivalent control mechanism. The Permit or control mechanism must contain, among other things "* * * [e]ffluent limits based on applicable general Pretreatment Standards in part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and applicable local law." 40 CFR 403.8(f)(1)(iii)(C). When a Control Authority develops equivalent mass limits under today's provision, these limits will meet the requirement that the Permit or control mechanism include "effluent limits based on categorical Pretreatment Standards." As is the case with any equivalent Standard established under 40 CFR 403.6(c), in order for the Approval Authority and the public to be able to verify compliance by the CIUs with these equivalent Standards, the Control Authority will need to document how the mass limit calculations were derived and make the documents publicly available (*i.e.*, to the Approval Authority, EPA, the general public or any third party requesting this information).

Establishing mass limits that are equivalent to promulgated concentration-based categorical Pretreatment Standards does not improperly transfer Standard-setting authority to the Control Authority. As noted above, EPA's current regulations already require the inclusion in Industrial User Permits (or other control mechanisms) of effluent limits based on the categorical Standard. Moreover, current 40 CFR 403.6(c)(6) provides that equivalent limits calculated in accordance with the regulation are deemed Pretreatment Standards for purposes of section 307(d) of the CWA. If a Control Authority develops an equivalent mass limit, in lieu of the concentration-based categorical Standard, the equivalent limit is a Pretreatment Standard. Where it is determined that the equivalent mass limit is not properly calculated, the Control Authority must modify the Industrial User's control mechanism to require immediate compliance with the correctly calculated limits.

Which categorical industries are potentially affected by this provision? Section 403.6(c)(5) applies to qualifying indirect dischargers that are currently subject to Pretreatment Standards expressed as concentration limits. Currently, there are 14 categorical Pretreatment Standards that are expressed as concentration limits alone and are therefore eligible for equivalent mass limits under new 40 CFR 403.6(c)(5). The following categories are included in this list:

- Inorganic Chemicals (40 CFR part 415)

- Fertilizer Manufacturing (40 CFR part 418)
- Petroleum Refining (40 CFR part 419)
- Steam Electric Power Generating (40 CFR part 423)
- Leather Tanning (40 CFR part 425)
- Glass Manufacturing (40 CFR part 426)
- Rubber Manufacturing (40 CFR part 428)
- Metal Finishing (40 CFR part 433)
- Pharmaceutical Manufacturing (40 CFR part 439)
- Transportation Equipment Cleaning (40 CFR part 442)
- Paving and Roofing Materials (40 CFR part 443)
- Commercial Hazardous Waste Combustors Subcategory of the Waste Combustors Point Source Category (40 CFR part 444)
- Carbon Black Manufacturing (40 CFR part 458)
- Electrical and Electronic Components (40 CFR part 469)

In finalizing the rule, EPA is making the following changes to the proposed rule:

Discretionary Use of Equivalent Mass Limits: The final rule emphasizes that the decision on whether to convert the CIU's concentration-based categorical Pretreatment Standard to an equivalent mass limit rests with the Control Authority. Though EPA intended that the Control Authority's decision would be discretionary, there was considerable uncertainty and concern among the commenters that the proposed language was not clear on this issue (*e.g.*, "* * * the Control Authority may convert the limits * * *"). Several Industrial Users expressed concern that they might be compelled to accept equivalent mass limits. EPA has clarified the language of the final rule. The rule now states that Industrial Users initiate the process by requesting that their concentration-based limits be converted to equivalent mass limits. The final rule states it this way: "* * * the Industrial User may request that the Control Authority convert the limits to equivalent mass limits. The determination to convert concentration limits to equivalent mass limits is within the discretion of the Control Authority."

Industrial User Eligibility Conditions: EPA has included requirements that the Industrial User must first meet before the Control Authority may establish an equivalent mass limit. Several of these eligibility requirements are also conditions that must be met in order to continue use of equivalent mass limits after becoming effective. The final rule includes the following requirements:

(1) *Implementation of Water Conservation:* EPA has revised the proposed language requiring the Industrial User to be "employing water conservation methods and technologies that substantially reduce water use" to make it clear that current as well as future water conservation efforts can both qualify for the use of equivalent mass limits. The final rule also requires water conservation during the initial term of the Industrial User's control mechanism which includes equivalent mass limits. The revised rule language is as follows: "the Industrial User must employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism." See 40 CFR 403.6(c)(5)(i)(A). The final rule also requires that the Industrial User "continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to paragraph (5)(i)(A) so long as it discharges under an equivalent mass limit." See 40 CFR 403.6(c)(5)(ii)(D).

(2) *Use of Effective Control and Treatment Technologies:* The proposed rule required "control measures at least as effective as the model treatment technologies that serve as the basis for that particular Standard." The final rule revises this language, while retaining the principle of requiring the installation and use of effective control measures to meet the applicable Pretreatment Standards for Existing Sources (PSES) or Pretreatment Standards for New Sources (PSNS). The revised language is as follows: "The Industrial User must * * * currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and not have used dilution as a substitute for treatment."

The proposal discussed the fact that the Pretreatment Regulations in 40 CFR 403.6(d) contain a strict prohibition against the use of dilution as a substitute for treatment, and that requirement remains. This provision states that no Industrial User introducing wastewater pollutants into a POTW may increase the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with a Pretreatment Standard. EPA has concluded that it is appropriate to require CIUs seeking to use an equivalent mass limit to demonstrate their past compliance with the dilution prohibition in 40 CFR 403.6(d). See 40 CFR 403.6(c)(5)(i)(B). For example, the Industrial User can compare its current flows to the flows that are assumed as part of the model technology for the categorical Pretreatment Standard. Consistent with the dilution requirement, this requirement is intended to provide the Control Authority with a means of identifying facilities that may have used dilution in the past. Such CIUs would be precluded from obtaining less stringent equivalent mass limits by taking advantage of historically high flows based on dilution. The Control Authority may review historical monitoring and inspection reports, and process descriptions from the appropriate categorical Standard Technical Development Document published with each categorical Standard, when evaluating the Industrial User's demonstration of no dilution. See 40 CFR 403.6(c)(5)(i)(B). The final rule also requires, as a condition of using equivalent mass limits, that Industrial Users "maintain and effectively operate control and treatment technologies adequate to comply with the equivalent mass limits." See 40 CFR 403.6(c)(5)(iii)(A). EPA revised the proposed rule language because of a concern that Industrial Users not be locked into a particular control technology or be required to make a complex technical showing that one treatment system is "no less effective" than another. By requiring that existing treatment be "adequate to achieve compliance with applicable categorical Pretreatment Standards" and that Industrial Users "maintain and effectively operate control and treatment technologies adequate to comply with the equivalent mass limits", EPA has concluded that the final rule language ensures that CIUs with equivalent mass limits continue to provide appropriate treatment. See 40 CFR 403.6(c)(5)(ii)(A).

(3) *Establishment of Actual Average Daily Flow Rate and Baseline Long-Term Average Production Rate:* The proposal had indicated that it would be sufficient to provide a "reasonable estimate of the flow required to achieve the facility's production goals using BAT and in the absence of the water saving technology." See 64 FR 39570, July 22, 1999. The final rule changes this approach to require, consistent with current regulations and guidance, that equivalent mass limits be based on the CIU's actual average daily flow rate and that flows be measured, as opposed to estimated, using a continuous effluent flow monitor. The final rule requires that the flow rate used be representative of current operating conditions; the actual period of flow used to develop the equivalent limits should reflect actual current production and water usage. See 40 CFR 403.6(c)(5)(i)(C). EPA

also conditions the use of equivalent mass limits on the continued use of an effluent flow monitoring device to record the facility's flow rates. See 40 CFR 403.6(c)(5)(iii)(B).

In addition, the preamble of the proposed rule suggested that the flow component of the equivalent mass limit be based on estimated flows "required to achieve the facility's production goals." See 64 FR 39570, July 22, 1999. EPA did not discuss in the preamble how the mass limit may need to change if the Industrial User changed its production goals, resulting in potentially substantial changes in process wastewater flow. In adopting a later amendment to its regulations that authorized the establishment in limited circumstances of equivalent mass limits for certain Industrial Users in the City of Owatonna, Minnesota, however, EPA did require Industrial Users subject to equivalent mass limits to notify the Control Authority where "production rates are expected to vary by more than 20 percent from a baseline production rate" determined when the mass limit was first established. See 65 FR 59741 (October 6, 2000); see 40 CFR 403.19(b). Accordingly, EPA has modified the final rule to include a similar requirement for the Industrial User to provide the Control Authority with sufficient information to establish an average daily production rate. See 40 CFR 403.6(c)(5)(i)(C). The Industrial User must also notify the Control Authority of substantial changes in the rate so that the Control Authority is given an opportunity to alter the equivalent mass limit in the event of such changes (*e.g.*, greater than 20 percent from the baseline rate). See 40 CFR 403.6(c)(5)(ii)(C) and (iii)(B).

(4) *Use of Equivalent Mass Limits for Relatively Uniform Operating Conditions:* The final rule includes an additional requirement that the Industrial User demonstrate that it must "not have daily flow rates, production levels, or pollutant levels that vary so significantly that an equivalent mass limit is not appropriate to control the Discharge." See 40 CFR 403.6(c)(5)(i)(D).

(5) *Consistent Compliance with Standards:* The availability of equivalent mass limits is also conditioned on consistent compliance with applicable categorical Pretreatment Standards. The final rule does not specify the period during which the CIU must have demonstrated full compliance, but allows the Control Authority to assess the available compliance records to the extent that they are representative of current operating conditions and reflect the Industrial User's understanding of the regulatory obligations that must be achieved for compliance with these and related regulations. See 40 CFR 403.6(c)(5)(i)(E).

(6) *Calculation of Equivalent Mass Limit:* The final rule specifies how Control Authorities are to calculate the equivalent mass limit. The following language is used to describe the calculation: In the first term of the control mechanism, "A Control Authority which chooses to establish equivalent mass limits must * * * calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average Standard for the applicable categorical Pretreatment Standard and the appropriate unit conversion factor." See 40 CFR 403.6(c)(5)(iii)(A). The rule further provides that the Control Authority "may retain the same equivalent mass limit in subsequent control mechanism terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to 40 CFR 403.6(d). The Industrial User must also be in compliance with 40 CFR 403.17 (regarding the prohibition of bypass)." See 40 CFR 403.6(c)(5)(iii)(C).

(7) *Pollutants Excluded from Equivalent Mass Limits:* EPA has adopted specific language from 40 CFR 122.45(f)(1)(i) which identifies the following pollutants as being inappropriate for the use of equivalent mass limits: pH, temperature, and radiation. See 40 CFR 403.6(c)(5)(iv).

4. Summary of Major Comments and EPA Response

Discretionary Use of Equivalent Mass Limits: Several commenters raised concerns regarding who would initiate the use of equivalent limits and how much discretion the Control Authority has in imposing these limits. A consistent theme raised among commenters representing Industrial Users was the concern that the proposed rule would enable the Control Authority to impose equivalent mass limits over the objection of the Industrial User. Where POTW and state commenters provided comments on this issue, they expressed concern that equivalent mass limits would create additional burden and generally emphasized that the decision to use equivalent mass limits to regulate a particular indirect discharger should be left to the POTW's discretion. EPA notes that these positions appear consistent with one another. The final rule allows for an Industrial User to request equivalent mass limits and emphasizes that the decision to convert concentration-based limits to equivalent mass limits lies within the Control Authority's discretion. EPA does not anticipate that an Industrial User would request the implementation of equivalent mass limits if it would create an unacceptable amount of additional burden for the facility, nor would the Control Authority accept an undue burden upon itself if a benefit would not be foreseen.

What level of treatment must be in place prior to being eligible for equivalent mass limits? A few commenters objected to the proposal's requirement that in order to be eligible to use equivalent mass limits the Industrial User be utilizing control measures at least as effective as the model treatment technologies that serve as the basis for the particular categorical Standard. These commenters instead supported the availability of equivalent mass limits where the Industrial User could demonstrate that the concentration limits can be met without treatment. One POTW and an environmental organization took the opposite position, indicating that treatment must be in place prior to the use of equivalent mass limits. Today's final rule requires that the Industrial User be using control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard. The final rule also requires that the Industrial User maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits.

EPA is imposing this requirement for a number of reasons. First, the use of technologies adequate to achieve compliance with applicable Standards provides the Control Authority with a level of assurance that qualifying Industrial Users have not been meeting their concentration-based Standards through dilution, which is prohibited in 40 CFR 403.6(d). Second, although water conservation typically increases the concentrations of pollutants in the process wastewater prior to treatment, facilities with on-site treatment typically show a reduction of pollutant loadings in the final effluent prior to its discharge to the POTW sewer system even where the facility has instituted water conservation. This reduction can be attributed to the fact that many wastewater treatment technologies are

limited more by physical/chemical properties of the pollutants in the wastewater, than by influent concentrations. Therefore, reducing the wastewater Discharge flow will generally reduce the overall pollutant load from the facility. This is based on the assumption that the reduced wastewater flow to the treatment system will allow the system to more successfully treat the increased pollutant concentrations in the wastewater treatment influent stream. This is a key reason EPA has concluded it is appropriate to provide this incentive for water conservation. More information on water conservation techniques and methods can be found in the rule docket (see OW–2002–0007–0091).

In assessing whether the Industrial User has installed adequate control and treatment technologies, the Control Authority may review the corresponding categorical Standard Development Document for potential control options. For instance, the Development Document for Effluent Limitations Guidelines and Standards for the Metal Finishing Point Source Category (EPA 440/1–83/091, June 1983) identifies that PSES for the waste streams containing complexed metals is based on the segregation of the complexed metals waste stream with separate treatment for the precipitation of metals and the removal of suspended solids. A figure depicting the different model treatment technologies for the complexed metals and other wastestreams can be found in Figure 10–1 (page X–2) of the Development Document. (pages X–1–4, and XII–1) The Control Authority might also review current trade association literature for other control options that have become available since the Development Document was produced, as well as sources available through EPA's "Sector Strategies" programs and EPA's Office of Compliance Assistance: *http://www.epa.gov/sectors/program.html, http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/index.html.*

Prohibition Against Dilution: A few commenters indicated their concern that implementation of equivalent mass limits might allow Industrial Users to secure lenient standards through the calculation of equivalent mass limits based on flows that reflect diluted wastestreams. The proposal discussed the fact that the Pretreatment Regulations have a strict prohibition against the use of dilution as a substitute for treatment (see 40 CFR 403.6(d)). This provision indicates that no User introducing wastewater pollutants into a POTW may increase the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with a Pretreatment Standard. EPA has concluded that it should require CIUs seeking to obtain an equivalent mass limit to demonstrate their past compliance with the dilution prohibition in 40 CFR 403.6(d). This requirement is intended to provide the Control Authority with a means of screening out those facilities that may have used dilution in the past in order to prevent their benefiting from higher than necessary flow rates when calculating a mass limit. (There are a number of ways the Control Authority may evaluate whether the CIU was diluting its flows. This evaluation can be made by comparing the CIU's product to flow ratio relative to that of other facilities within its industry or requesting an explanation of why it uses the level of process water that it uses.)

How should compliance status affect an Industrial User's eligibility for equivalent mass limits? Several POTWs and one environmental organization recommended that the proposed rule be revised to require the Industrial User to demonstrate that it is able to maintain compliance with applicable Pretreatment Standards prior to water conservation and to restrict eligibility based on such compliance. EPA agrees with the commenters' suggestions. The final rule adopts the requirement that interested Industrial Users must have consistently complied with all applicable categorical Standards prior to the request to be subject to mass-based limits. Compliance with the underlying categorical Standards is an appropriate benchmark for the Control Authority to use in determining the eligibility of an individual discharger. Where the Industrial User has demonstrated consistent compliance, the Control Authority will be given some level of confidence that the User will be able to adjust to the use of a limit that is considered equivalent to the concentration-based Standard. It is EPA's view that the reverse is also true in that the lack of compliance may indicate a User's inability to comply with an equivalent limit. EPA is not specifying a minimum time period over which an Industrial User must be in consistent compliance. EPA notes that regulations in 40 CFR 403.12(o) require that Industrial Users maintain records of all information from any monitoring activities for a minimum of three years. These records should be reviewed and considered to the extent that they reflect compliance with current conditions. At a minimum, EPA expects that no Industrial User found to have been in significant noncompliance (SNC) at any time during the previous two years would be considered to have achieved consistent historical compliance.

Incompatibility of equivalent mass limits with particular industries: One trade association commented that the use of mass limits is incompatible with their industry due in large part to the fluctuating conditions in their operations. It is EPA's view that certain facilities do not have operations that are compatible with the use of equivalent mass limits. For example, a high degree of variability in a CIU's flows, production, or pollutant Discharge levels will likely make it an inappropriate candidate to use mass limits to control its Discharge. For this reason, the final rule now requires Industrial Users to "not have daily flow rates, production levels, or pollutant levels that vary so significantly that an equivalent mass limit is not appropriate to control the Discharge." See 40 CFR 403.6(c)(5)(i)(D).

Water Conservation as a Qualifier for Eligibility: Several commenters stated that the implementation of equivalent mass limits should not be restricted to Industrial Users that have already implemented water conservation measures. EPA agrees that this provision's intent is to encourage innovative water conservation methods and should not include the pre-condition that Industrial Users have already employed water conservation measures. This will allow ongoing as well as future water conservation efforts by enabling both to use equivalent mass limits. Regardless of whether a facility's water conservation methods are ongoing or have yet to be implemented, this final rule does require that the Industrial User demonstrate that it will employ water conservation methods and technologies that will substantially reduce water use during the term of its control mechanism. The Industrial User is also required to employ water conservation to remain eligible for equivalent mass limits.

This final rule does not specify the amount of water conservation that should be achieved or that constitutes a substantial reduction in water use. EPA notes that several existing programs define thresholds that the Control Authority may consider for use in this context. For example:

- The final rule for the Pretreatment Community XL (XLC) Site-Specific Rulemaking for Steele County, MN (65 FR 59743) of 40 CFR 403.19(b),

indicates that the participating Industrial Users committed as a group to reduce water usage by 10% over the initial 5 year project period.

• National Metal Finishing Strategic Goals Program promotes a 50% water reduction from each particular participating industry's baseline 1992 water usage. *http://www.strategicgoals.org/coregoals.cfm.*

• EPA considers a ± 20% change in flow rate to be a significant change in a flow rate. See page 2–14 of the EPA Guidance Manual for the Use of Production Based Pretreatment Standards and the Combined Wastestream Formula (Sept. 1985).

How do facilities employ water conservation? Currently there are many water reduction technologies in use in manufacturing facilities across the United States. Many of the technologies that EPA evaluated when establishing the categorical Standards included water conservation techniques and technologies. The Technical Development Document for a particular categorical Standard is a valuable tool for information on these technologies. Technologies that reduce wastewater Discharge rates usually increase the concentrations of pollutants in the wastewater leaving the industrial operation. However, for facilities with wastewater treatment systems on site, these technologies may still reduce the final effluent pollutant loading, because many of the wastewater treatment technologies are limited more by physical/chemical properties of the pollutants in the wastewater, than by influent concentrations. Therefore, reducing the wastewater Discharge flow will generally reduce the overall pollutant load from the facility.

In the Metal Finishing (MF) industry, facilities apply flow reduction practices to process baths or rinses to reduce the volume of wastewater discharged. One method that conserves water is cascade rinsing: when water is reused from one rinsing operation to another, less critical rinsing operation, before being discharged to treatment. Facilities can also reduce water use by coordinating and closely monitoring rinse water requirements. Matching water use to rinse water requirements optimizes the quantity of rinse water used for a given work load and tank arrangement. More information on water conservation techniques and methods can be found in rule record (see OW–2002–0007–0091).

Assessing how reduced Discharges will affect POTWs: One commenter asserted that EPA would be violating Section 307 if the Agency finalizes the proposal by failing to address the issue of whether the more highly concentrated wastestreams that would result from reduced water consumption "would cause environmental harm at either the POTW or in the receiving stream or result in long-term sediment contamination." EPA disagrees that the wastestreams resulting from water conservation present a potential problem for the environment or POTWs for a number of reasons. First, in order to qualify for an equivalent mass limit, the Industrial User must have been in consistent compliance with its categorical Pretreatment Standards prior to the Industrial User's request to be subject to equivalent mass limits. Second, the Control Authority must properly convert the concentration-based Pretreatment Standard to an equivalent mass limit using the CIU's actual long-term average daily flow rate. This will ensure that there will be no adverse impacts to human health or the environment as the pollutant concentrations discharged under the equivalent mass limits will be no greater than the concentration-based Pretreatment Standard. Third, EPA's existing regulations ensure continued protection of receiving waters and POTW operations.

EPA emphasizes that the use of equivalent limits to regulate individual Industrial Users does not relieve the Control Authority of the need to establish and enforce local limits in accordance with 40 CFR 403.5(d) and require compliance with the General and Specific Prohibitions of 40 CFR 403.5(a) and (b) which are protective of the POTW operations, and prevent Pass Through and Interference. Consequently, the use of equivalent mass limits would not be authorized if it resulted in a violation of any of the General and Specific Prohibitions or local limits established under 40 CFR 403.5(d). Furthermore, this provision may be implemented only following determination of its feasibility by Control Authorities, and not unilaterally by Industrial Users. Control Authorities' local limits will continue to ensure protection of the individual POTW operations and its receiving environment. Finally, the requirements of today's rule ensure that there will be no increase in the quantity of pollutants reaching the POTW as a result of adopting equivalent mass limits.

How should the equivalent mass limit be calculated? One POTW commenter suggested that EPA clarify how to calculate the Industrial User's equivalent mass limit in order to specify which flow to use. EPA agrees that it is important to provide specific instructions on how the equivalent limit is to be calculated, especially with regard to which flow rate is the correct one to use. Today's final rule at 40 CFR 403.6(c)(5)(iii)(A) includes the following formula to be used to calculate the equivalent mass limits:

• For converting daily maximum concentration Standards to equivalent daily maximum mass limits: The product of the facility's actual average daily flow rate and the applicable concentration-based categorical daily maximum Standard, and the appropriate unit conversion factor. The unit conversion factor is 8.34 when multiplying a concentration limit (expressed as milligrams/liter) by flow (expressed as millions of gallons per day).

• For converting monthly average concentration Standards to equivalent monthly average mass limits: The product of the facility's actual average daily flow rate and the applicable concentration-based categorical monthly average Standard, and the appropriate unit conversion factor. The unit conversion factor is 8.34 when multiplying a concentration limit (expressed as milligrams/liter) by flow (expressed as millions of gallons per day).

It is important to note that the same flow value, the CIU's actual long-term average daily flow rate, is used in the calculation of both the daily maximum and monthly average equivalent mass limits.

Why are equivalent mass limits calculated using the actual average daily flow rate? EPA specifies in 40 CFR 403.6(c)(5)(iii)(A) that the equivalent mass limits are calculated by multiplying the actual average daily flow rate by the applicable concentration-based categorical Pretreatment Standard and the appropriate conversion factor. The use of the actual average daily flow rate as the flow basis for the limits is consistent with existing EPA regulations and guidance. The current Pretreatment Regulations already require the Control Authority to calculate "equivalent concentration limits" by using the "average daily flow rate of the Industrial User's regulated process wastewater." See 40 CFR 403.6(c)(4). The provision further states that "this average daily flow rate shall be based upon a reasonable measure of the Industrial User's actual long-term average flow rate, such as the average daily flow rate during a representative year." CIUs are elsewhere required to report in the baseline monitoring report (BMR) flow measurements showing the "measured average daily and maximum daily flow, in gallons per day, to the POTW" (see 40 CFR 403.12(b)(4)) and to include in

the periodic report "a record of measured or estimated average and maximum daily flows" (see 40 CFR 403.12(e)(1)).

Perhaps most importantly, use of the long-term average daily and monthly flow is the only way to ensure that mass-based limits are truly equivalent; that is, that they do not result in any increased discharge of pollutants to the POTW or the environment. If a higher than average flow rate were used, it would be possible for the total Discharge of pollutants to increase, which would violate the fundamental basis of this streamlining change.

EPA notes that its decision to use long-term average daily flows has been discussed in numerous categorical Pretreatment Standard rulemakings, including the final Pesticides Manufacturing Standard. See 58 FR 50679 (September 28, 1993). In addition, Chapter 2.8 of EPA's Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastestream Formula (September 1985) describes important considerations when determining the appropriate flow rate for use in developing equivalent limits including that the same average rate is to be used to calculate both daily maximum and maximum monthly average alternative limits, to avoid the use of data for too short a time period (particularly, "estimating the average rate based on data for a few high days, weeks, or months is not appropriate") (page 2–14). Likewise, it is important here to use a long-term average that reflects current operating conditions ("actual long-term average flow"). Use of flow data from a period that does not represent current production and water use would result in mass limits that are not equivalent. Thus, the period of time used to compute the actual long-term average must reflect recent production changes as well as reductions in water use.

Why are continuous effluent flow monitoring devices required? The final rule requires that an Industrial User subject to equivalent mass limits must continuously monitor its flow.

(1) *Flow monitoring is required to ensure the equivalency to Federal categorical Pretreatment Standards:* When calculating the equivalent limits and determining compliance, the Control Authority must accurately characterize the existing conditions. EPA is therefore requiring that the flow value used in the translation of the concentration limit to the equivalent mass limit and the flows utilized during compliance assessment be based upon a measured value using a continuous flow measuring device.

Several industry commenters and one trade association representing municipalities indicated that they would support the use of estimation methods to derive facility flow rates for establishing the mass limit and for determining compliance. These commenters emphasized that estimation methods have been proven to be accurate and cost-effective. Some commenters supported the proposal's allowance for "a reasonable estimate of the flow * * *", but did not indicate whether they would support a requirement to use only measured flows. Several commenters, including three states, two POTWs, and one environmental interest group agreed that the level of accuracy obtained from flow measurements, in contrast to flow estimation, is required in order to ensure equivalency with the categorical Standards in calculating the mass limits. These commenters stressed that flow measurement was also necessary in order to adequately assess compliance with the equivalent Standard. One state went so far as to declare that the proposal was flawed in that it had not required flow measuring devices. These factors as well support EPA's decision to require continuous effluent flow monitors.

(2) *The relative costs and benefits of using flow monitoring devices should be considered:* In terms of the relative cost of implementing flow monitoring devices, the CIU and Control Authority may wish to evaluate the expense of the installation of the continuous flow measuring device with the benefits that may be achieved by institution of water conservation methods and technologies. Cost effective flow measurement devices are estimated to cost $400–$1500. See Utility Supply of America, 2004–05. USA BlueBook: Everything for Water & Wastewater Operations, Vol. 115. In contrast, commercial/industrial facilities using municipal water and sewer systems incur an average $28,000 monthly charge for their water and sewer use (survey of 194 U.S. cities, conducted by Raftelis Financial Consulting), consisting of over $12,000 per month for water charges and over $16,000 per month for wastewater charges (2000 Water and Wastewater Rate Survey, Exhibit 2, page 19, and Exhibit 5, page 44). Based on these figures, it is EPA's view that it is likely that benefits of water conservation will outweigh the cost of the meter in many situations. However, if this is not the case, the Industrial User does not have to request equivalent mass limits.

Furthermore, measurement of water usage may bring water conservation benefits over and above those resulting from other technology changes. Accurate measurement of the water use is beneficial to identifying the amounts and usage of water so that behavioral practices can be modified and tracked. "Monitoring the amount of water used by an industrial/commercial facility can provide information on quantities of overall company water use, the seasonal and hourly patterns of water use, and the quantities and quality of water use in individual processes. Baseline information on water use can be used to set company goals and to develop specific water use efficiency measures. Monitoring can make employees more aware of water use rates and makes it easier to measure the results of conservation efforts. The use of meters on individual pieces of water-using equipment can provide direct information on the efficiency of water use" (Cleaner Water Through Conservation, EPA 841–B–95–002, April 1995, page 7).

(3) *Flow monitoring is required to determine compliance with equivalent mass limits:* Accurate flow measurement is required to determine compliance with a mass limit based on a concentration sample result received from the laboratory. To such end, "Relying on water consumption records when determining compliance with mass-based limits is not an acceptable practice" (Industrial User Inspection and Sampling Manual for POTW's (EPA 831–B–91–001, April 1994, page 88). A permanent device that continuously records the flow allows the POTW to ensure compliance with mass-based limits.

On the day(s) that the Control Authority conducts its mandatory one-per-year monitoring of the Industrial User, the relevant actual flow from the facility is required to assess whether the User is in compliance with its mass limits. Requiring the use of an effluent flow monitoring device, therefore, will also facilitate the accurate assessment of compliance.

For compliance assessment purposes, EPA advises Control Authorities to use the following approach:

- For a daily maximum equivalent mass limit, EPA recommends determining compliance by comparing the limit with the total mass of the pollutant discharged over the day, calculated as the product of the actual pollutant concentrations in the Industrial User's Discharge sampled pursuant to 40 CFR 403.12(g) and the actual flow from the Industrial User on the day the sample is taken based on measurements from the continuous effluent flow monitoring device and an appropriate conversion factor.

• For an average monthly equivalent mass limit, EPA recommends determining compliance by comparing the limit with the sum of all daily mass Discharges measured during a calendar month divided by the number of days measured during that month. The monthly limit must still be met when only one discharge day is sampled.

This approach mirrors the approach of EPA's NPDES regulations based on the definition of 'daily discharge' in 40 CFR 122.2 defined as the "discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the 'daily discharge' is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the 'daily discharge' is calculated as the average measurement of the pollutant over the day."

How are limits established for new Industrial Users? Several POTW commenters noted that the proposed rule was silent regarding whether equivalent mass limits would be available to new Industrial Users. The commenters observed that flow rate information is available for many existing Users, but a baseline of information will not exist for new dischargers. Today's final rule is silent regarding specific procedures to follow in establishing limits for new Discharges. The rule does not prohibit Control Authorities from calculating equivalent mass limits for such Dischargers. However, EPA notes that in general it will not be possible for new dischargers to satisfy the requirements in today's rule unless some historical information about them is available.

First, recognizing that 40 CFR 403.6(c)(5)(i)(E) requires the Industrial User to "have consistently complied" with Pretreatment Standards", before considering the use of equivalent mass limits, the Control Authority will need to allow for a sufficient period of time to pass in order to properly assess the User's compliance record.

Second, the new discharger will need some time to collect an adequate amount of flow rate data from its continuous effluent flow monitor to establish its actual average daily flow rate and, in turn, to provide the Control Authority with sufficient information to calculate the equivalent mass limit. Although 40 CFR 403.6(c)(5)(i)(C) does not specify a minimum amount of time over which the long-term flow rate is developed, the rule does specify that the flow rate must be "representative of current operating conditions." Therefore, EPA recommends that the Control Authority establish some minimum period of time during which it will require the new discharger to have monitored its flow before considering equivalent mass limits.

Third, new dischargers will be subject to Pretreatment Standards for New Sources (PSNS), and as such will be expected to begin discharging in conformance with Standards that represent the most stringent controls attainable through the application of the best available demonstrated control technology for pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. 67 FR 64219 (October 17, 2002). EPA does not anticipate that new dischargers will immediately need to reduce water use. Presumably, these dischargers will have had the opportunity prior to commencing their discharge to implement optimal water consumption practices that meet their own production demands and cost efficiency standards. Over time, and after considering such factors as the cost of water and production needs, the facility may become interested in pursuing further water conservation measures.

Recalculation of equivalent mass limits to adjust for production changes during the term of the control mechanism: A few commenters were concerned that once set, the equivalent mass limits would be locked in place permanently and Industrial Users would be forced to comply with one mass limit forever. They specified that this would potentially restrict a facility from increasing production. The final rule requires that the Industrial User notify the Control Authority whenever production rates are expected to vary by more than 20 percent from baseline production rate. Upon notification of a change in production rate, the Control Authority would then reassess the appropriateness of the equivalent mass limit. The Control Authority may determine that it is necessary to change the equivalent mass limit to reflect flow changes that may result from substantial changes in production. As such production-based flow changes may occur, the approach EPA is adopting for alternative mass limits is consistent with regulations at 40 CFR 403.6(e) that discuss alternative limits based on the combined wastestream formula:

"The Industrial User shall comply with the alternative daily maximum limit and monthly limits fixed by the Control Authority until the Control Authority modifies the limits or approves an Industrial User modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant."

Recalculation of equivalent mass limits in subsequent terms of the Industrial User's control mechanism: A few commenters asked whether and to what extent equivalent mass limits would need to be recalculated to reflect changed circumstances at the facility prior to reissuance of the control mechanism. When a Control Authority reissues an Industrial User's control mechanism, the Control Authority may determine that changed conditions suggest the need to revisit the equivalency of the mass limits to the categorical Pretreatment Standards that were included in the prior control mechanism. For example, EPA anticipates that the Control Authority may choose not to recalculate equivalent mass limits if effluent flow was reduced as the result solely of the implementation of water conservation techniques and methods. See 40 CFR 403.6(c)(5)(iii)(C). However, the Control Authority may determine that, in cases where a reduction in discharged effluent flow was accompanied by a decrease in production, a reevaluation is warranted. This reevaluation is consistent with EPA's long-standing approach under existing section 403.6(c) with respect to equivalent mass or concentration limits. See 53 FR 40563–67 (October 17, 1988).

Today's rule conditions an Industrial User's eligibility for the establishment of equivalent mass limitations on the requirement that the Industrial User is providing adequate treatment to achieve compliance with the Pretreatment Standards and is not using dilution to achieve compliance in lieu of treatment (in accordance with 40 CFR 403.6(d)). Industrial Users must continue to operate and maintain their treatment systems as a requirement to continue to benefit from the flexibility granted by equivalent mass limitations. This approach, in addition, is consistent with 40 CFR 403.17, which prohibits the intentional diversion of wastestreams, including categorical process wastewater, from any portion of an Industrial User's treatment facility unless such is "unavoidable to prevent loss of life, personal injury, or severe property damage [and] there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime," and proper notice has been submitted to the Control Authority. Where a bypassing of treatment may still result in discharged

effluent that complies with the applicable Pretreatment Standards or Requirements, an Industrial User may only allow the bypass of its treatment facility if it "is for essential maintenance to assure efficient operation." Therefore, Industrial Users, in order to continue to qualify for equivalent mass limit conversions from categorical Pretreatment Standards, must continue to effectively operate and maintain their control and treatment technologies.

Is this provision consistent with the Clean Water Act? One commenter objected to the proposed rule stating that EPA lacks the authority to delegate its standard-setting authority to Control Authorities, an authority which Congress gave to EPA alone under Section 307 of the Clean Water Act. The commenter reasoned that the provision would require that local authorities make "significantly more complicated decisions than mere arithmetic", and that the proposal would require them to become "expert in both pollution control and water conservation in each regulated industry."

EPA is promulgating the changes to its Pretreatment Regulations in part under section 307(b) of the Clean Water Act. Section 307(b) clearly authorizes EPA from time to time to revise Pretreatment Standards as "control technology, processes, operating methods or other alternatives change." Therefore, today's action is not in violation of section 307(b) to the extent this provision authorizes Control Authorities to establish equivalent mass limits for the Pretreatment Standards for certain categories of industry subject to concentration-based Standards. See list of affected industries in Section III.J.3 above. As EPA has explained, the amendments to the regulations will facilitate both User's compliance and POTW oversight for industries engaging in water conservation, a practice EPA wants to encourage.

EPA's decision to authorize the establishment of equivalent mass limits for Industrial Users in limited circumstances is not inconsistent with its decision in some circumstances to adopt categorical Pretreatment Standards for specific industry categories whose Standards are expressed in 40 CFR Subchapter N as concentration limits. A number of reasons support this conclusion. First, EPA's general preference in most cases is to express wherever possible effluent limitations and Pretreatment Standards in terms of mass limitations. EPA's decision to establish concentration-based Pretreatment Standards, however, for certain industrial categories, is the result, in part, of the wide variation in process water use within a particular industrial category. These variations prevented EPA from developing water allowances associated with particular achievable treatment technologies. Due to the complexity and variation among facilities covered by categorical Standards, EPA did not have enough data, could not adequately measure production or could not find a consistent production normalizing relationship in order to establish mass limits on a nationwide basis. The effect of concentration limits also is, over time, to reduce mass Discharges of pollutants as water use is reduced in some circumstances. But concentration limits may in some circumstances serve as a disincentive to water conservation.

Second, the establishment of an equivalent mass limit would not result in any increase in the mass of pollutants discharged. Eligibility for an equivalent limit is dependent on a number of conditions including implementation of water conservation measures and demonstration of a history of compliance with the concentration-based Pretreatment Standard. As noted above, the implementation of water conservation efforts may have already resulted in some reduction of total mass Discharges. Further, because the mass limit is based on water use during the period of compliance with the concentration limit, in no event, could mass Discharges under the new equivalent limit exceed these mass Discharge levels. Another condition for the establishment of mass limits is that the facility report to the Permitting Authority in the event of substantial changes in production rates. This provides the Permitting Authority with an opportunity to monitor the equivalent limits and determine whether some modification to the limit may be required.

There will be no adverse consequences either to POTWs or to receiving waters from the adoption of the provision authorizing the expression of concentration-based Pretreatment Standards as mass limits. Industrial Users must continue to comply with the General and Specific Prohibition in 40 CFR 403.5(a) and (b). Thus, Discharges under an equivalent limit may not result in Discharges that result in Pass Through or Interference, create hazards to the POTW, or threaten the health and safety of POTW workers. Section 403.5(c) would prohibit the establishment of an equivalent mass limit if the equivalent limit would result in a violation of these General and Specific Prohibitions.

Finally, EPA disagrees that the final rule would illegally transfer the Agency's Standard-setting authority to Control Authorities. As noted previously, a Control Authority is already required to translate categorical Pretreatment Standards into Permit (or control mechanism) effluent limits. EPA also disagrees with the commenter's observation that this provision would be too complicated for Control Authorities to use and oversee. EPA notes that the use of this provision is solely at the discretion of the Control Authority. If a particular Control Authority is concerned that it does not have the expertise to develop and oversee equivalent mass limits, today's final rule does not in any way allow the Industrial User to demand that the Control Authority convert existing concentration-based Standards to equivalent mass limits or require that the Control Authority implement mass-based limits if requested by the Industrial User. As a matter of daily implementation of approved Pretreatment Programs, states and POTW Control Authorities conduct complex activities: Review Baseline Monitoring Reports (40 CFR 403.12(b)) and other data to issue control mechanisms to Industrial Users, calculate production-based standards and alternative limits using the Combined wastestream formula when necessary, and evaluate and assess the POTW plant processes to determine technically based local limits that are protective of Pass Through and Interference.

Public Review and prior Approval Authority approval: Many commenters (21) did not support requiring public and/or Approval Authority review of an Industrial User's proposed mass limit prior to Control Authority approval. Most were concerned that such a requirement would create additional administrative burden. EPA notes that this provision is intended to allow the Permit limitation to be expressed in an equivalent manner and is not anticipated to require a change in a Control Authority's enabling legislation to issue and enforce control mechanisms. Changes affecting individual Industrial Users are not substantial modifications within the principles of 40 CFR 403.18(b)(6). "'Changes to the POTW's control mechanism' refers to a change in the type of mechanism used (*e.g.*, permit versus orders) and not to change[s] in one facility's permit or to changes in the boilerplate or other details of the permit." (62 FR 38408) However, the new equivalent limit is subject to review

as part of routine Approval Authority oversight activities, such as a Pretreatment Compliance Inspection or a Control Authority Audit, as are other control mechanisms that implement categorical Standards, local limits, and any other equivalent limits. Also, in accordance with current regulations, Industrial User Permit files and information necessary for determining Permit limitations and compliance, must be publicly available. Therefore, EPA has decided not to require additional review or approval mechanisms for implementation of equivalent mass limits.

K. Oversight of Categorical Industrial Users (40 CFR 403.3(v)(2), 403.8(f)(2)(v), 403.12(e), (g), (i), (q)

Today's rule authorizes a Control Authority to reduce certain of its oversight responsibilities and sampling and inspection requirements for a newly established class of indirect discharger, the "non-significant categorical Industrial User" (NSCIU). A NSCIU is a discharger that discharges no more than 100 gallons per day of total categorical wastewater to the POTW. Today's final rule also allows Control Authorities to reduce the reporting requirements for certain Categorical Industrial Users with a record of consistent compliance with applicable Pretreatment Standards and Requirements in the following circumstances. Reduced reporting may be approved when the Industrial User's categorical wastewater flow does not exceed (1) the smaller of 5,000 gallons per day or 0.01 percent of the POTW's design dry weather hydraulic capacity; (2) 0.01 percent of the POTW's design organic treatment capacity; and (3) 0.01 percent of the maximum allowable headworks loading (MAHL). The POTW may also now be authorized to reduce its own required annual inspections and monitoring of those Categorical Industrial Users eligible for reduced reporting.

1. What are the existing rules?

The current regulations require certain minimum oversight of SIUs by POTWs with Approved Pretreatment Programs (and States acting as Pretreatment Control Authorities). The required minimum oversight includes inspection and sampling of each SIU annually, reviewing the need for a slug control plan, and issuing a Permit or equivalent control mechanism with a duration not to exceed five years (40 CFR 403.8(f)(1)(iii) and (2)(v) and 403.10(f)(2)(i)). Industrial Users that are not SIUs are not specifically subject to this oversight.

The definition of "Significant Industrial User," previously at 40 CFR 403.3(t) (now found at 40 CFR 403.3(v)), includes two types of facilities. The first includes all Industrial Users that are subject to categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N. The facilities subject to these Standards are now described as Categorical Industrial Users (CIUs): There are no current exceptions to the classification of all CIUs as SIUs. The second category of facilities included in the definition of SIU are certain facilities that are not CIUs, that Discharge 25,000 gallons per day or more of process wastewater, facilities that contribute a process wastestream constituting 5 percent or more of the POTW's capacity, and any Industrial User that the Control Authority designates on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement. The Control Authority may exclude facilities meeting any of the second category's criteria from the SIU definition based upon a finding that it does not have a reasonable potential to adversely affect the operation of the plant or violate any Pretreatment Standard or requirement. However, a Control Authority may not similarly exclude CIUs from the classification as an SIU.

The regulations require that all CIUs submit to their Control Authority twice per year, unless required more frequently, a report indicating the flow, nature, and concentration of pollutants in their effluent which are limited by the applicable categorical Pretreatment Standards (40 CFR 403.12(e)(1)). The report must be based on data obtained through sampling and analysis of the effluent which is representative of conditions occurring during the reporting period at a frequency necessary to assess and assure compliance with applicable Standards (40 CFR 403.12(g)). The regulations make clear that these are minimum requirements and Control Authorities have the flexibility to increase sampling and reporting requirements.

2. What changes did EPA propose?

EPA proposed to allow Control Authorities to exempt certain CIUs from the definition of SIU. The proposal would have defined NSCIUs as (1) facilities that never discharge untreated concentrated wastes that are subject to the categorical Pretreatment Standard as identified in the development document for the Standard, and never discharge more than 100 gallons per day (gpd) of other process wastewater, and (2) Industrial Users subject only to certification requirements after having met baseline monitoring report requirements (*e.g.*, pesticide formulators and packagers). In addition to proposing to set the NSCIU definitional threshold at 100 gpd, EPA also requested comment on alternative criteria for determining "non-significant" status, such as a percentage of a POTW's total flow discharged by a particular Categorical Industrial User (64 FR 39574, July 22, 1999).

In conjunction with the establishment of a NSCIU category, EPA also proposed that such Users not be subject to minimum inspection and sampling requirements. Instead, the new requirements would have allowed the Control Authority to establish the appropriate level of inspection and sampling for these facilities. In addition, EPA would have established new minimum reporting requirements for NSCIUs. EPA proposed that at a minimum, a non-significant facility would be required to annually report and certify its status as a non-significant facility, and certify that it is in compliance with the applicable Pretreatment Standards. A Control Authority could have required more frequent sampling, inspections, or reporting as it finds necessary to ensure compliance with the categorical Standards.

3. What changes is EPA finalizing in today's rule?

EPA is establishing an NSCIU category based on the 100 gpd threshold. If a POTW chooses to treat a qualifying Categorical Industrial User as an NSCIU, the oversight requirements for the NSCIU (and POTW with respect to the NSCIU) will be significantly reduced. In response to support among commenters for establishing alternative criteria for oversight reduction, EPA is also creating a "Middle Tier" category of Categorical Industrial Users which will still be considered SIUs, but will be eligible for reductions in reporting and Control Authority monitoring and inspections. These changes will be discussed in detail below.

In the period before the Agency proposed regulatory changes to streamline elements of its Pretreatment Regulations, EPA engaged in an extensive effort to solicit the views of the interested public. In 1995, EPA's Office of Wastewater Management initiated an evaluation of all of the General Pretreatment Regulations in 40 CFR Part 403 in order to identify streamlining opportunities. Based on input from various stakeholders, EPA developed issue papers that

summarized 11 areas in which the Pretreatment Regulations might be streamlined. In May 1996, the issue papers were distributed to a broad base of external stakeholders (States, cities, trade associations, professional organizations, and environmental interest groups). As EPA explained in the preamble to the proposal (64 FR 39573–74, July 22, 1999), in 1997, EPA solicited comment on revising the definition of Significant Industrial User to reduce the reporting and permitting requirements for certain non-significant facilities that are subject to National categorical Pretreatment Standards. An earlier Water Environment Federation (WEF)/Association of Metropolitan Sewerage Agencies (AMSA) Pretreatment Streamlining Workshop had recommended excluding facilities under 100 gpd from the definition of Significant Industrial User, exempting from the definition of SIU any CIU that has no reasonable potential to adversely affect the POTW's operation and allowing Control Authorities more flexibility in the oversight of facilities that would continue to be defined as SIUs. EPA's 1997 letter sought comment on these recommendations and also on whether to allow POTWs more flexibility in sampling SIUs that had been in consistent compliance.

Most commenters on the earlier options supported allowing POTWs to reduce oversight of non-significant CIUs, recommending NSCIU be defined as below thresholds of from 100 gpd to 4,000 gpd. Some commenters opposed any definition based on flow and preferred one based on total mass or impact on the POTW. The record to the proposed rule included all of the material submitted by commenters as well as the information developed by the WEF/AMSA workshop.

While EPA based its 1999 proposed streamlining revision of the definition of SIU on a 100 gpd threshold, the Agency did seek comments on a number of alternative thresholds that reflected the earlier suggestions from the public. As EPA stated:

"In today's proposal EPA is again requesting comment on alternative criteria for determining non-significant status. Such alternative criteria might include a higher flow cutoff or a numeric cutoff based on some alternative criteria such as the estimated mass of pollutant loadings or the percentage of a POTW's total flow discharged by a particular CIU. Alternatively, the criteria might be narrative and include a qualitative description of what constitutes a Significant Industrial User. Commenters are encouraged to provide data on the likely effects of alternate criteria, including the number of CIUs that would be eligible for non-significant status and any adverse impacts on POTWs or the environment that might result." 64 FR 39574, July 22, 1999.

Today's final rule provides reduced oversight responsibilities for POTWs and reporting requirements for CIUs that represent an accommodation between the alternatives considered by EPA in the proposal (including the recommendations earlier submitted to the Agency and discussed in detail in the proposal) and those suggested by commenters in response to the proposal's solicitation of views. Thus, the final rule combines EPA's proposed approach to non-significant CIUs and reduced POTW oversight requirements, with the suggestions of many commenters provided both in comments before and after proposal that EPA consider thresholds based on POTW treatment capacity. Consequently, the final rule adopts a fixed threshold requirement for NSCIUs, while establishing threshold expressed in terms of percentage of POTW flows for the "Middle Tier" CIUs. EPA views this approach as balancing the need for required minimum oversight of larger dischargers with the appropriate flexibility to POTWs to target oversight resources where they will provide the greatest benefit in terms of reducing the risk to the POTW and the environment.

For the reader's assistance, the following chart distinguishes between NSCIUs, "Middle Tier" Significant Categorical Industrial Users, and all other Significant Categorical Industrial Users:

	Control mechanism required?	Minimum CIU reporting requirements	Minimum POTW inspection/sampling requirements
NSCIUs	No*	Certification only (no reporting), one time per year.	Not required.
"Middle Tier" Significant CIU	Yes	One time per year (if representative of Discharge conditions during reporting period).	One time every other year.
All Other Significant CIUs	Yes	Two times per year (at a minimum).	One time per year.

*If the Control Authority determines that an existing NSCIU no longer meets a required criterion for being categorized as non-significant, such as the requirement to be in consistent compliance with Pretreatment Standards and Requirements, the User becomes an SIU and must be issued a control mechanism.

EPA emphasizes that a Control Authority's decision to categorize certain CIU facilities as "non-significant" or "Middle Tier" does not in any way relieve the affected CIUs of the duty to comply with the applicable categorical Pretreatment Standards. The provisions in this final rule merely affect the reporting and inspection frequency imposed on these Users.

a. Non-Significant CIU—Definition and Oversight Requirements

Today's final rule adopts the proposed definition of "non-significant categorical Industrial User" (NSCIU) with minor modifications and the proposal's approach of, if the Control Authority chooses to do so, reducing required oversight for such Users. A few modifications, which will be detailed further below, were made to the proposed provisions in response to concerns raised by commenters. The final rule retains the 100 gpd threshold for defining a NSCIU, as well as the condition that the User never discharges "untreated concentrated wastes". However as pointed out by one commenter, the proposed rule would have applied the 100 gpd threshold to "other process wastewater" rather than "categorically regulated process wastewater," which the commenter thought was a more appropriate basis for the threshold. Because facilities are deemed to be CIUs by virtue of their discharges of categorical process wastewater, rather than process

wastewater generally, EPA agrees that it is appropriate to base the threshold for non-significant CIUs on their discharge of categorically-regulated process wastewater and has revised the definition of NSCIU accordingly in the final rule. As was the case with the proposed rule, in order to be considered an NSCIU, the User must fulfill its annual certification requirement. The final rule also retains the Control Authority's discretion to reduce the NSCIU's sampling and reporting requirements as long as the User annually reports and certifies that it still meets the definition of a NSCIU. In addition, because the User is no longer an SIU, there is no requirement to control the User through a permit or other control mechanism. POTWs will be required to provide a list of the facilities that are being regulated as non-significant CIUs in the POTWs annual Pretreatment report. After an initial list is provided, deletions and additions should be keyed to the previously submitted list.

Regardless of whether an Industrial User is determined to be a NSCIU, it is still a categorical discharger and, as such, is still required to comply with applicable categorical Pretreatment Standards and related reporting and notice requirements in 40 CFR 403.12(b), (c), (d), (f), (j), and (p). Control Authorities will still be required to perform the same minimum oversight of a NSCIU that is required for other facilities that are not SIUs, including notifying the CIU of its status and requirements (403.8(f)(2)(iii)); receiving and reviewing required reports (403.8(f)(2)(iv) and 403.12(b), (d), & (e)); random sampling and inspection (403.8(f)(2)(v)); and investigating noncompliance as necessary (403.8(f)(2)(vi)).

Why did EPA choose the 100 gpd threshold for NSCIUs? EPA recognizes that any numeric flow cutoff will have both advantages and disadvantages. The 100 gpd criterion was supported by commenters, although many suggested alternative, higher volume cutoffs. The 100 gpd flow cutoff is a conservative number. EPA estimates 15 percent of current CIUs might be eligible for NSCIU status, based on an extrapolation of data from a range of POTWs across the country.

Does EPA expect the annual NSCIU certification to be supported by sampling data? Today's final rule does not require that each certification statement be supported by sampling data. NSCIU facilities, however, must have a reasonable basis for their compliance certifications. When sampling is not performed, the non-significant CIU must describe the basis for its compliance certification, such as, for example, the absence of changes in processes that generate categorical wastewaters or in raw materials used since the last sampling data was analyzed.

Does EPA expect the Industrial User or Control Authority to perform annual monitoring for NSCIUs? Today's final rule does not establish any minimum sampling requirements for the Industrial User or Control Authority. However, EPA recommends that sampling by the Industrial User or Control Authority be performed from time to time to confirm compliance with the categorical Standards.

Significant Changes to the Proposed Rule

EPA made the following significant changes to the provisions affecting NSCIUs:

Discharge Volume Cutoff: The definition of NSCIU now specifies that the 100 gpd cutoff is to be measured as the "total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard)" discharged. The term "total" clarifies that the volume discharged is a maximum limit. Averaging the Discharge volume for purposes of meeting the 100 gpd cutoff is not authorized (*e.g.*, enabling a discharger to exceed the limit on some days as long as the average is 100 gpd or less). EPA had requested comments in the proposal on whether to allow the non-significant definition to include facilities that discharge up to 500 gallons of process wastewater once-per-week. EPA has concluded that requiring a definitive, total daily cutoff is the easiest and most efficient way to oversee and implement the NSCIU provisions.

EPA also notes that the definition of NSCIU specifically enables Users to exclude non-categorical wastewater Discharges such as sanitary, non-contact cooling and boiler blowdown wastewater in the determination of the Discharge volume, unless specifically included in the Pretreatment Standard. See 40 CFR 403.3(v)(2).

Additional Definitional Conditions: The final rule includes a few modifications to the conditions that a User must meet to be considered "non-significant". These modifications include:

(1) *Consistent Compliance with Pretreatment Standards:* In order to be considered an NSCIU, the User, prior to the Control Authority's findings, must have consistently complied with all applicable categorical Pretreatment Standards and Requirements. See 40 CFR 403.3(v)(2)(i) and discussion above regarding the consistent compliance criteria for equivalent mass limits.

(2) *Documentation and Certification of Compliance:* The final rule also requires that the NSCIU certify that its Discharge is in compliance with all applicable categorical Pretreatment Standards and requirements and annually submit the certification using the statement in 40 CFR 403.12(q). See 40 CFR 403.3(v)(2)(ii).

Signatory Requirements: Today's final rule clarifies that the annual certification statement must be signed in accordance with requirements in 40 CFR 403.12(l). See 40 CFR 403.12(q).

Annual List of NSCIUs: The final rule makes explicit what was discussed in the preamble to the proposed rule that a Control Authority is required to include a list of Users considered to be NSCIUs in its annual report to the Approval Authority. See 40 CFR 403.12(i).

Annual Evaluation of NSCIU Status: The proposed rule is modified to require that a Control Authority evaluate, at least once per year, whether an Industrial User previously determined to be an NSCIU still meets the "non-significant" criteria in 40 CFR 403.3(v)(2). See 40 CFR 403.8(f)(2)(v). EPA anticipates that this evaluation will primarily involve the Control Authority's verification that certification forms have been submitted by the NSCIUs documenting continued eligibility for NSCIU status and compliance with applicable Pretreatment Standards and Requirements.

b. Middle Tier Categorical Industrial Users—Definition and Oversight Requirements

EPA is today establishing a new category of Categorical Industrial Users (CIUs), the "Middle Tier" CIUs. The term "Middle Tier" is used because the applicable requirements for these CIUs are more stringent than for NSCIUs, but authorize less reporting than for other (larger) Significant CIUs. Note that both "middle tier" and other CIUs (except NSCIUs) are still considered SIUs. Refer to above table comparing applicable requirements of all types of CIUs in Section III.K.3. An Industrial User may be considered a Middle Tier CIU if its Discharge of categorical wastewater does not exceed any of the following:

- 0.01 percent of the design dry weather hydraulic capacity of the POTW, or 5,000 gpd, whichever is smaller, as measured by a continuous effluent flow monitoring device unless

the Industrial User discharges in batches;

• 0.01 percent of the design dry weather organic treatment capacity of the POTW; and

• 0.01 percent of the maximum allowable headworks loading for any pollutant for which approved local limits were developed by a POTW.

The Control Authority must also demonstrate that the CIU has not been in significant noncompliance for any time in the past two years, and that the CIU does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period. See 40 CFR 403.12(e)(3)(i–iii).

What are the reporting and monitoring requirements for Middle Tier CIUs? Once eligible for Middle Tier CIU status, the Control Authority may reduce the required periodic monitoring report for such Users from a minimum of twice per year to a minimum of once per year. EPA notes that any reduction in reporting must satisfy the requirements of 40 CFR 403.12(g)(3) which states that reports such as Industrial User periodic monitoring reports must be based upon "data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are *representative of conditions occurring during the reporting period.*" (emphasis added) Therefore, it is important that facilities authorized to use the new minimum sampling frequency conduct their sampling on representative wastewater flows. For example, while certain batch dischargers will have sufficiently uniform processes, such that reduced sampling will be representative and able to meet the Middle Tier criterion concerning variable flow rates, production levels, or pollutant levels (40 CFR 403.12(e)(3)(iii)), other batch dischargers may vary their processes seasonally or unpredictably, hence making it difficult for the Control Authority to demonstrate both that a minimum of one sample per year will be representative, and that the discharger complies with 40 CFR 403.12(e)(3)(iii). In addition, POTWs may also reduce their own obligations to inspect and sample these Middle Tier CIUs from once per year to once every two years. See 40 CFR 403.8(f)(2)(v)(C).

Why is EPA proposing the Middle Tier CIU category? In the preamble to the proposed rule, EPA solicited comment on "alternative criteria for determining non-significant status * * * [such as] the percentage of a POTW's total flow discharged by a particular CIU." See 64 FR 39574 (July 22, 1999). Eighteen (18) POTW commenters responded by suggesting that EPA adopt the following three tier system. The first tier would encompass CIUs discharging less than 100 gpd. Referred to as "de minimis" CIUs, this tier is similar to today's promulgation of the NSCIU category. The second tier (referred to by the commenters as "non-significant CIUs") would have included CIUs that meet all of the following conditions:

• The CIU's discharge of categorical wastewater does not exceed 0.01 percent of the design dry weather hydraulic capacity of the receiving POTW, nor does it exceed 10,000 gpd;

• The CIU's discharge of categorical wastewater does not exceed 0.01 percent of the design dry weather organic treatment capacity of the receiving POTW;

• The CIU's discharge of categorical wastewater does not exceed 0.01 percent of the maximum allowable headworks loading (MAHL) for the receiving POTW of any pollutant detected at the POTW headworks for which the CIU is subject to a categorical Pretreatment Standard; and

• The CIU has not been in significant noncompliance (SNC) for the most recent four consecutive six-month periods.

Where a CIU met the criteria of the second tier, the Control Authority would have the option of reducing the Industrial User's monitoring to once per year (as compared to the current minimum of twice per year) and the Control Authority's inspection and monitoring requirements to once every two years (as compared to the current minimum requirement of once every year). It is important to note that the commenters' second tier would not have enabled the Control Authority to reduce oversight requirements to the degree that the first tier would. The third tier of the commenters' system would have included all other CIUs subject to the full array of oversight requirements.

In August 2000, EPA approved a project under the Agency's Project XL program for the Metropolitan Water Reclamation District of Greater Chicago (MWRDGC) to pilot the use of the "non-significant CIU" criteria supported by the POTW commenters on the proposed rule. In exchange for agreeing to a variety of measures to improve the level of environmental performance by the POTW, MWRDGC was given authority to apply the "non-significant CIU" criteria (similar to the criteria referred to in this final rule as the "Middle Tier" CIU criteria) to its CIUs. For more information, refer to EPA's website for the pilot project *http://www.epa.gov/projectxl/mwrd/page1.htm*. EPA notes that this project is no longer active due to intergovernmental issues.

EPA has concluded that the basic approach suggested by the commenters in their second tier (referred to now as "Middle Tier" CIUs), and approved for use by the Metropolitan Water Reclamation District of Greater Chicago's Project XL initiative, has merit in its focus on reducing reporting, inspection, and monitoring requirements for CIUs contributing a very small fraction of the POTW's design flow and pollutant loading. However, while adopting the basic criteria for the second tier (now referred to as the "Middle Tier"), EPA has decided to adopt a ceiling of 5,000 gpd as compared to the recommended 10,000 gpd. EPA has concluded that the 5,000 gpd ceiling will provide significant streamlining while providing additional assurance that larger dischargers which may have significant potential to cause Pass Through or Interference will continue to receive full SIU oversight.

In addition, EPA has added additional safeguards designed to ensure the selection of appropriate CIUs and the proper documentation of data supporting the inclusion of individual CIUs in the Middle Tier. For instance, new 40 CFR 403.12(e)(3)(iii) binds the Control Authority's discretion by requiring eligible CIUs to "not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period pursuant to paragraph (g)(3) of this section." In addition, EPA specifies that any documentation supporting the Control Authority's finding that a specific CIU fits the Middle Tier criteria must be retained for a period of three years after the expiration of the term of the affected CIU's control mechanism. See 40 CFR 403.12(e)(3)(v).

How should the Control Authority develop its site-specific Middle Tier criteria? The criteria in 40 CFR 403.12(e)(3)(i) must first be translated into thresholds that are meaningful for the specific POTW. Each site-specific threshold will then be used to determine whether individual CIUs qualify for Middle Tier status. To complete the necessary calculations, the Control Authority will need to have the following information:

• The POTW's design dry weather hydraulic treatment capacity: These

values, typically expressed in units of millions of gallons per day, are generally found in the POTW's design and specifications documents, and in many cases are identified in its NPDES Permit or Fact Sheet.

• The POTW's design dry weather organic treatment capacity: These values, typically expressed as pounds per day, are also generally found in the POTW's design and specifications documents, and Operations and Maintenance manuals. Biochemical Oxygen Demand (BOD) measurements are used as a measure of the organic strength of wastes in wastewater. The Control Authority must use the design organic treatment capacity value that has been documented in their records for use in translating to useable thresholds for the Middle Tier CIUs.

• The MAHL (Maximum Allowable Headworks Loading) for any pollutant for which approved local limits were developed by the POTW: The MAHL for each pollutant will be found in the POTW's approved technically based local limits supporting document and may also be identified in the POTW's local sewer use ordinance. EPA notes that a MAHL for a pollutant is not the same thing as the local limit for that pollutant. An MAHL is an estimate of the upper limit of pollutant loading to a POTW, intended to prevent Pass Through or Interference. MAHLs are the building blocks for local limits, as distinct from a local limit which is an allocation of the industrial portion of the headworks loading (MAHL) specific to one or more Industrial Users. Therefore, the Middle Tier criterion relating to MAHL is calculated as a percentage of the MAHL, not a percentage of a local limit. For additional information regarding the development of MAHLs and local limits, refer to Local Limits Development Guidance (EPA 833–R–04–002A, July 2004).

Once the Control Authority has located this information, it will then need to multiply each value by 0.01% to translate those numbers into the criteria to be used to determine whether individual CIUs are eligible for Middle Tier status. Where the design hydraulic treatment capacity is concerned, if the product of 0.01 percent and the hydraulic capacity exceeds 5,000 gpd, then the regulations require the Control Authority to use the smaller number, or in this case 5,000 gpd.

In addition, EPA recommends that the Control Authority list out the applicable Middle Tier eligibility criteria in the Industrial User's control mechanism. This will ensure that the CIU is specifically aware that its Middle Tier status only applies as long as it meets the eligibility criteria.

How will Control Authorities determine if a specific Industrial User is eligible for Middle Tier status? EPA recommends that the initial determination of whether or not an Industrial User is eligible be made by comparing the User's actual Discharge (in units of flow or mass loading depending on the specific criterion) for the previous two years to each of the criterion to verify that the industry meets all of the criteria on a consistent basis. EPA notes that CIUs are required to establish eligibility by measuring their flow through the use of a continuous effluent flow monitor. See 40 CFR 403.12(e)(3)(i)(A). However, recognizing that continuous flow monitors are not appropriate for use in batch Discharges, the final rule provides an exception for those CIUs that discharge by batch. In such circumstances, EPA recommends that the batch discharger provide some other similarly accurate measure of flow, such as by providing a reasonable estimate of actual volume discharged from process wastewater containers.

What documentation is required to designate Middle Tier CIUs? The Control Authority is required to document the specific criteria used in determining whether specific Industrial Users are considered Middle Tier CIUs. This documentation should show: (1) The translation of the 40 CFR 403.12(e)(3)(i)(A)–(C) criteria into values that are specific to each Control Authority, and (2) the basis for including specific CIUs in the Middle Tier category. This information must be retained for a period of three years after the expiration of the term of the control mechanism. See 40 CFR 403.12(e)(3)(iv).

Industrial Users will also need to retain sufficient information to verify that they continue to be eligible for Middle Tier CIU status, such as records showing their daily flows of categorical wastewater. The Control Authority (and Approval Authority in some instances) will use this information to validate the inclusion of Industrial Users in the Middle Tier CIU category. Industrial Users will find it necessary to have records of daily flows to be able to provide notification to the Control Authority if they exceed the flow criteria in 40 CFR 403.12(e)(3)(i)(A).

How often would an individual POTW's Middle Tier criteria be expected to change? It is not anticipated that the values upon which an individual POTW assigns Middle Tier status would change during the term of the POTW's NPDES control mechanism. Some scenarios which may necessitate a change to the POTW's Middle Tier criteria are:

• Operations and maintenance work to correct excessive inflow and infiltration in the collection system: Where such changes affect actual wastewater flow, the POTW's local limits may need to be adjusted to account for this capacity change, thereby affecting the calculation of the plant's maximum allowable headworks loading (MAHL). Such adjustments to the MAHL may necessitate a recalculation of the POTW's Middle Tier criteria, which in turn may affect which CIUs are eligible for inclusion.

• Collection System Expansions or Extensions/Treatment Plant Upgrades: Such modifications typically are conducted over a period of time and the effect on the treatment capability or efficiency of the POTW may not be instantaneously realized. When such improvements are completed, the Middle Tier criteria may need to be modified accordingly to reflect the new hydraulic and organic treatment capacities, as well as the MAHL. EPA notes that these situations are each identified in the Agency's local limits guidance as reasons to re-evaluate a POTW's local limits. See Chapter 7 of Local Limits Development Guidance (EPA 833–R–04–002A, July 2004). EPA's guidance (page 7–5) indicates "usually, a POTW will undertake a detailed reevaluation of its local limits in response to one of more significant changes at the treatment works or in the Discharges it receives. Recalculating existing MAHLs or determining MAHLs for new [pollutants of concern] is generally an appropriate response to changes in: Removal efficiencies; Total POTW or [Industrial User] loading; Limiting criteria (NPDES Permits, water quality standards, sludge criteria); Sludge characteristics or method of disposal (*e.g.*, percent solids, disposal site life); Background concentrations of pollutants in receiving water." In addition, treatment efficiencies are verified annually, when the POTW submits its annual report, to the Approval Authority, which summarizes the changes within the Control Authority's Pretreatment program over the past year.

• Local Limits Reevaluations: Formal reevaluations of a POTW's technically based local limits must be conducted with each renewal of the POTW's NPDES Permit. See 40 CFR 122.21(j)(2)(ii) EPA recommends, therefore, that recalculation of the Middles Tier criteria be performed and coordinated for submittal to the Approval Authority at the same time as the periodic local limits reevaluation,

easing the burden of separate reviews for both the Approval and Control Authorities.

EPA notes that in situations where the Middle Tier criteria are modified, the Control Authority must submit the revised criteria to the Approval Authority as a modification to the POTW Pretreatment Program. Depending on the specific situation, Approval Authorities will determine whether a modification is a substantial or non-substantial modification of the approved Pretreatment Program. In either case, at a minimum, such modifications must be submitted to the Approval Authority by the Control Authority at least 45 days prior to implementation pursuant to 40 CFR 403.18.

What criteria should a Control Authority apply if the Approved POTW Pretreatment Program involves more than one treatment plant? Similar to guidance provided in page 9–2 of the Local Limits Development Guidance (EPA 833–R–04–002A, July 2004), the Control Authority has options for how it applies or allocates its MAHLs. The Control Authority could decide to provide local limits to the Industrial Users based on the evaluation for the individual treatment works which serve those Users. Alternatively, the Control Authority could select the lowest (most stringent) local limit for each pollutant across all of the treatment plants. When establishing the Middle Tier criteria, the Control Authority can either apply the MAHL on a per POTW Treatment plant basis to only those IUs serviced by the individual treatment works; or it could identify and use the most stringent MAHL across all of its treatment plants.

What happens if the CIU, after becoming eligible for Middle Tier status, exceeds the Middle Tier criteria? As stated previously, the CIU's eligibility for Middle Tier status depends on its ability to meet all of the criteria in 40 CFR 403.12(e)(3). If for any reason, a Middle Tier CIU finds that it no longer meets the conditions in 40 CFR 403.12(e)(3)(i), (ii), or (iii), the CIU must notify the Control Authority and must immediately begin complying with the full SIU reporting requirements in 40 CFR 403.12(e)(1). For example, if a CIU exceeds its eligibility criterion for flow on any day as determined by its continuous effluent flow monitor, that User no longer meets the conditions for Middle Tier status, and must immediately notify the Control Authority and begin complying with the non-reduced frequency of SIU reporting requirements. Although not specified in the Middle Tier provisions, EPA recommends that Control Authorities consider whether they should preclude those CIUs which lose their Middle Tier status from regaining that status for at least the remainder of the term of the control mechanism. Where the Industrial User can demonstrate its ability to once again meet the eligibility conditions after sufficient passage of time (*e.g.*, the remainder of the term of the control mechanism), the Control Authority may then consider renewing the User's status as a Middle Tier CIU.

What type of oversight will EPA provide over the implementation of the Middle Tier CIU provisions? As with any new regulatory provision, given the number of conditions involved in the Middle Tier CIU category, EPA expects that the Agency will need to ensure that these provisions are implemented as intended. EPA will pay close attention to the Control Authority's adherence to these eligibility conditions and the overall implementation of these provisions. POTW Pretreatment Program audits and Pretreatment Compliance Inspections (PCIs) will provide EPA, as well as state Approval Authorities, with important opportunities to assess how the Control Authorities' are implementing this measure. Like any implementation issue in the Pretreatment Program, if a Control Authority has incorrectly applied the eligibility conditions such that one or several Industrial Users are erroneously considered Middle Tier CIUs, EPA will recommend in its audit or PCI findings that the Middle Tier status be revoked for those Users.

4. Summary of Major Comments and EPA Response

Should EPA establish an NSCIU category? The overwhelming majority of commenters supported the proposed establishment of the NSCIU category, although many differed on what flow threshold would be the most appropriate for identifying such Industrial Users. One commenter expressed strong opposition to the creating the NSCIU category. This commenter indicated that EPA had not shown a basis in the record for this regulatory change, any evidence that the facilities and Control Authorities to be given streamlined oversight actually comply with applicable requirements, any evidence that Control Authorities will be able to detect noncompliance in a timely fashion without these oversight requirements, and any evidence that the change adequately protects POTWs and the environment. As outlined above, EPA is today finalizing provisions which enable Control Authorities to designate certain Categorical Industrial Users as NSCIUs, at their discretion, if the facilities meet all of the eligibility conditions, including discharging fewer than 100 gpd of total categorical wastewater.

EPA disagrees with the commenter's rationale for opposing the establishment of the NSCIU category and the opportunity to reduce oversight for such Users. First, there is a basis in the record for this regulatory change. In the preamble to the proposed rule, EPA discussed the concerns of Control Authorities which supported the need for the proposal. Such concerns included the widely held perception that SIU oversight requirements are rigid, "especially with respect to smaller facilities that are subject to categorical Pretreatment Standards and facilities that they believe have no potential to cause Pass Through or Interference." See 64 FR 39572 (July 22, 1999). EPA sought comment on the concept of allowing the Control Authority to identify Users as NSCIUs where they discharged fewer than 100 gpd, and to reduce the oversight required for such non-significant facilities. EPA provided an estimate of the percentage of CIUs that might be affected (1–2 percent), and has since projected that this number may be as high as 15 percent. Because these facilities will need to be good actors to be eligible (*e.g.*, the regulations require a record of consistent compliance and annual certification of compliance with applicable Standards and Requirements), and because they individually contribute an insignificant amount of flow to the POTW, the Agency has concluded that it has an adequate basis for allowing Control Authorities to reduce oversight requirements for such facilities.

Second, although EPA agrees that an Industrial User's compliance is a critical factor in whether the Control Authority may treat the User as an NSCIU, the Agency has concluded that it is unnecessary to evaluate overall compliance among these small CIUs prior to finalizing these provisions. What EPA is establishing in the final rule is the discretionary ability for Control Authorities to reduce oversight for select small Users. EPA is not requiring that this optional authority be used for any specific Industrial Users or that it be used in all cases. In fact, EPA would expect that the Control Authority will be reluctant to designate any particular CIU as an NSCIU if it has any concerns about the potential for any particular CIU to affect adversely the POTW or receiving water. Thus, the final rule requires, as a condition of eligibility for designation, that an Industrial User has a record of consistent compliance with applicable

Pretreatment Standards and Requirements prior to being defined as an NSCIU. See 40 CFR 403.3(v)(2)(i). After becoming an NSCIU, the User is then required to annually certify that it meets the definition of "non-Significant Categorical Industrial User" and that it has complied with all applicable Pretreatment Standards and Requirements. See 40 CFR 403.12(q). With these safeguards in place, EPA concludes that the final rule addresses the commenter's concern about the lack of evidence on overall compliance.

Third, EPA does not agree with the commenter's argument that Control Authorities will not have sufficient information to detect noncompliance in a timely fashion. It should be noted that the NSCIU provisions do not compel the Control Authority to reduce or eliminate applicable reporting, monitoring, and inspection requirements for every CIU with non-significant status. In fact, EPA expects that the Control Authority should assess each NSCIU to determine the extent to which oversight should be reduced. In addition, the combination of the NSCIU provisions and other existing regulatory requirements provide mechanisms for timely detection of noncompliance. Each Industrial User qualifying for NSCIU status must first demonstrate that it has consistently complied with applicable Pretreatment Standards and Requirements. After becoming an NSCIU, the User must annually certify that it still meets the requirements for non-significant status, and that it has complied with applicable Standards and Requirements. Lastly, as with all Industrial Users, the NSCIU is affected by the notification requirement in 40 CFR 403.12(j), which requires facilities to "promptly notify the Control Authority (and the POTW if the POTW is not the Control Authority) in advance of any substantial change in the volume or character of pollutants in their Discharge * * *." And, each NSCIU must also comply with 40 CFR 403.12(f), which provides that "all categorical * * * Industrial Users shall notify the POTW immediately of all Discharges that could cause problems to the POTW * * *."

Fourth, EPA has concluded that the NSCIU provisions will not affect protection of the POTW and the environment, contrary to the commenter's position. While the discretionary decision to treat an Industrial User as an NSCIU does relieve the Control Authority of certain oversight requirements with respect to the affected Industrial User, the facility's requirement to meet all applicable categorical Pretreatment Standards and its status as a CIU are not changed. Just because the CIU has been categorized as an NSCIU does not relieve it of its obligation to comply with categorical Pretreatment Standards and other applicable Pretreatment requirements, such as the notification provisions of 40 CFR 403.12(f) and (j). Also, the NSCIU is required to annually certify that it has met applicable Pretreatment Standards and Requirements. Therefore, with these safeguards in place, EPA finds that the NSCIU provisions are fully protective of the POTW and the environment.

How should the 100 gpd and Middle Tier criteria be applied to CIUs that commingle categorical and non-categorical wastestreams? Several commenters asserted that EPA should change the terms of the NSCIU language to indicate that only categorical wastestreams should be included when assessing whether an individual CIU meets the threshold for being designated as non-significant. EPA agrees, and has changed the definition of NSCIU to indicate that the CIU never discharges more than 100 gpd of "total categorical wastewater." EPA finds it important to note that in many instances, all or most process wastewater discharged by NSCIUs will be categorical wastewater. And where facilities co-mingle different types of categorical wastewater, the threshold for determining whether or not a facility may be considered a non-significant CIU would be based on the total amount of categorical wastewater discharged. That is, the breakdown of categorical wastewater flows by industrial category would not affect the threshold determination. However, EPA recognizes that there may be cases where facilities discharge both categorical wastewater and non-categorical process wastewater. This would occur where some of a facility's process wastewater Discharges were regulated under a National categorical Standard, while others were not, either because they were generated by operations from a different (non-regulated) industrial category, or because they were specifically excluded from coverage at the time the categorical Standards were promulgated. In cases where categorical and non-categorical process wastewater flow volumes cannot be reliably distinguished, the threshold determination should be based on total process wastewater flow volume.

Middle Tier CIUs (discussed further below) also apply flow thresholds that are measured against an Industrial User's "total categorical wastewater" flow. EPA notes that the same approach for co-mingled wastewater that applies to NSCIUs also applies to the Middle Tier CIUs.

Do POTW's need to conduct annual inspections or sampling of NSCIUs? Several commenters recommended that EPA specifically reduce oversight of NSCIUs by limiting Control Authority inspections and/or sampling. The recommended frequencies ranged between every other year to as often as once-per-year. Other commenters supported completely eliminating inspection and sampling requirements. With the adoption of today's rule, EPA is not establishing any minimum inspection and sampling requirements for NSCIUs. Today's rule instead requires the Control Authority to perform an evaluation, at least once per year, on whether the NSCIU meets the criteria of 40 CFR 403.3(v)(2). As part of the annual evaluation, EPA recommends that the Control Authority conduct an on-site inspection of the facility in order to maintain awareness of the facility's process and to determine to the extent possible whether the discharger is complying with its Pretreatment Program requirements. As part of the evaluation, the Control Authority should verify the NSCIU's certification under 40 CFR 403.12(q) and review any other documentation provided by the facility. The level of effort devoted to an evaluation can be tailored to the facility. EPA again notes that it anticipates that this evaluation will primarily involve the Control Authority's verification that certification forms have been submitted by all NSCIUs documenting eligibility for NSCIU status and compliance with applicable Pretreatment Standards and Requirements. The Control Authority is not required to control the NSCIU through a Permit or other control mechanism. However, the Control Authority could, on a case by case basis, determine whether individual control mechanisms are necessary for NSCIUs and develop adequate sampling and inspection frequencies.

One commenter suggested that some type of annual correspondence, at minimum, be incorporated into the Pretreatment Regulations to remind the NSCIU and Control Authority of their responsibilities and obligations under the Pretreatment Program. EPA agrees with the comment and has modified the rule language to include requirements that NSCIUs annually certify they are in compliance with all applicable Pretreatment Standards using the certification statement at 40 CFR 403.12(q). Further, the Control Authority must perform an NSCIU evaluation, at least once per year, and provide an updated list of NSCIUs to the

Approval Authority as part of its annual POTW Pretreatment report.

Can EPA provide some clarification of the NSCIU definition? Commenters expressed the need for clarification in the proposed definition of NSCIU. Several commenters were concerned that the language, as proposed, would allow Control Authorities to exempt a greater number of Industrial Users from Pretreatment Program requirements than what was intended under the proposal. These commenters interpreted the proposed definition to potentially allow an unlimited amount of treated concentrated wastewater (the proposal prohibited "untreated concentrated wastes") to be discharged to the POTW while still falling under the NSCIU threshold since it only required that Discharges of "other process wastewater" not be more than 100 gpd. Many commenters stated that a CIU could be deemed "non-significant", under the proposed definition, if it could merely demonstrate that it did not discharge "untreated concentrated wastes" subject to the categorical Pretreatment Standards and not more than 100 gpd of other process wastewater. Upon further consideration, EPA agrees that the proposed criteria for becoming a NSCIU was open to more than one interpretation and has revised the language in the final rule to further clarify the definition. Therefore, with the adoption of today's rule, EPA is clarifying the NSCIU definition to include "100 gpd of total categorical wastewater" in order to emphasize the fact that it is the "total" Discharge of 100 gpd or less of categorical process wastewater which qualifies a User for NSCIU status (as long as the other required conditions of 40 CFR 403.3(v)(2) are met), not some smaller subset of treated concentrated wastewaters.

Why didn't EPA promulgate a higher flow threshold? Many commenters supported the concept of creating a flow cut-off threshold, but suggested that the 100 gpd ceiling was too low to provide any significant relief in burden. Commenters suggested alternative flow thresholds ranging from 300 gpd to 25,000 gpd, and also suggested that facilities that have little or no potential to impact the operation of the receiving POTW be included in this classification. Other POTW commenters supported the Association of Metropolitan Sewerage Agencies (AMSA, now renamed as the National Association of Clean Water Agencies) proposal of an alternative cutoff which would be specific to the POTW.

EPA's intent in establishing the NSCIU category was to reduce the burden on Control Authorities of regulating Industrial Users which could truly be considered to present minimal impact to the treatment plant and the Pretreatment Program in general. It was not EPA's intention to remove a large segment of contributing CIUs from Pretreatment Program oversight, and the Agency has a limited amount of flow or other Discharge data from which to establish with any certainty the impact on the Pretreatment Program of allowing the NSCIU category to include a greater number of Users. EPA generally views the 100 gpd threshold as corresponding to the de minimis dischargers.

In the proposal, EPA estimated that about 2 percent of the current CIUs might be eligible for non-significant status. A recent evaluation of 75 POTW Pretreatment Programs indicated that an average of 15 percent of all CIUs in these municipalities would meet the 100 gpd threshold for NSCIU. EPA anticipates that the 100 gpd threshold will result in NSCIU eligibility for higher numbers of CIUs in select cities or regions.

One commenter was opposed to any higher flow or narrative threshold for batch dischargers based on the fact that the proposal would have eliminated minimal, but critical, requirements for annual inspection and sampling, biennial slug control plan reviews, and permit reviews once every 5 years, while ignoring the compliance history and the discharger's potential to harm the POTW. EPA wishes to clarify that a Control Authority will have discretion to designate certain CIUs as NSCIUs if they meet specific criteria, and to exercise that discretion in the case of any individual CIUs, but will not be obligated to exercise this discretion in any particular case. Although certain facilities may be considered NSCIUs, EPA does not specify what types of reporting requirements are necessary. Although the Control Authority may choose a lesser amount of currently required sampling and reporting, the final rule does not mandate this decision. [As stated above, EPA does require that the Control Authority conduct at a minimum an annual evaluation.] EPA expects that this evaluation will primarily involve the Control Authority's verification that certification forms have been submitted by all NSCIUs documenting eligibility and compliance with Pretreatment Standards and Requirements. EPA has also created conditions that address the commenter's concern about facility compliance. For example, to be eligible for NSCIU status, a facility must have consistently complied with all applicable categorical Pretreatment Standards and Requirements prior to the Control Authority's findings. Further, the NSCIU must certify on an annual basis (per the certification requirement in 40 CFR 403.12(q)) that its Discharge is in compliance with all applicable categorical Standards and Requirements.

May averaging be allowed in the NSCIU determination? EPA solicited comment on whether averaging should be allowed in determining whether a CIU fell under the 100 gpd threshold. Several commenters indicated that they concurred with the 100 gpd flow threshold, but suggested that the Agency include facilities that discharge up to 500 gallons per week. Today's final rule does not authorize the use of averaging to meet the 100 gpd threshold. EPA is concerned that allowing such an approach could be difficult to oversee from the Control Authority's perspective, and could be burdensome to implement from the CIU's perspective. A greater degree of precision and a higher frequency of reporting would be needed to support a threshold that allows for an averaging of flow values. For instance, the CIU would need to record precise flow measurements every day to be able to determine whether its average discharge volume falls below the threshold, requiring the Industrial User to establish a more sophisticated approach for tracking the facility's Discharge. Also, the use of an averaging approach will make it harder for the Control Authority to be able to determine compliance on the days it conducts its inspections. Because the 100 gpd approach is applied as a threshold which cannot be exceeded, it can be implemented in a more straightforward manner which is expected to minimize the opportunity for misinterpretation. If a facility is a batch discharger and currently discharges more than 100 gpd, EPA recommends that the Industrial User install some form of flow restrictor that will ensure that its discharge of categorical process wastewater will never exceed 100 gallons on any single day.

Does a facility have to treat its wastewater to be considered non-significant? Several commenters expressed concern that it appeared from the proposal that a facility would need to install and provide treatment for all its wastewater prior to discharge. EPA clarifies that a facility does not need to have treatment in place in order to be considered non-significant, consistent with the fact that the categorical Standards do not dictate what types of treatment technologies the CIU must use so long as the facility's Discharge, with

or without treatment, remains in compliance with the categorical Standard. The Standards only provide the limits with which any Industrial User's Discharge must comply. On the other hand, the final NSCIU criteria require that the facility not discharge any "untreated concentrated wastewater" since it may be assumed that untreated concentrated wastewater (*i.e.*, plating baths and rinses, solvents, sludges, etc.) would not be in compliance with the categorical Standard. Regardless of whether treatment exists at the CIU, the final rule requires that the facility must have consistently complied with all applicable categorical Pretreatment Standards and Requirements in order to be considered an NSCIU. Furthermore, the facility must, at minimum, annually certify that its Discharge is in compliance with all applicable categorical Pretreatment Standards and requirements.

EPA should adopt a third tier of CIUs which provide further oversight flexibility based on the impact of the Industrial User on the specific POTW: As stated previously, eighteen (18) POTW commenters recommended that EPA adopt the following category of CIU in addition to the NSCIU and SIU categories:

- The CIU's categorical wastewater Discharge does not exceed 0.01 percent of the design dry weather hydraulic capacity of the receiving POTW, nor does it exceed 10,000 gpd;
- The CIU's categorical wastewater Discharge does not exceed 0.01 percent of the design dry weather organic treatment capacity of the receiving POTW;
- The CIU's categorical wastewater Discharge does not exceed 0.01 percent of the maximum allowable headworks loading (MAHL) for the receiving POTW of any pollutant detected at the POTW headworks for which the CIU is subject to a categorical Pretreatment Standard; and
- The CIU has not been in significant noncompliance (SNC) for the most recent four consecutive six-month periods.

As explained in Section III.K.3.b, EPA has included this basic approach in the final rule, with the exception of changing the volume ceiling from 10,000 gpd to 5,000 gpd.

IV. Description of Areas Where EPA Is Not Taking Action on the Proposed Rule

A. Specific Prohibition Regarding pH (40 CFR 403.5(b)(2))

This section discusses EPA's proposal to amend 40 CFR 403.5(b)(2) to authorize the introduction of Discharges with pH less than 5.0 in certain circumstances. EPA has decided not to adopt the proposed changes to 40 CFR 403.5(b). EPA concluded that inadequate scientific information was available to determine the effects of short-term, low pH Discharges on the integrity of the POTW collection systems to support a change to the current prohibition on the introduction of Discharges with a pH lower than 5.0 into POTWs.

1. What is the existing rule?

Acidic wastes can corrode sewer pipes with a resulting release of pollutants into the environment. To address this concern, the current regulations include a limit on the acidity of wastes, a minimum pH limit, in the specific prohibitions at 40 CFR 403.5(b). This prohibition applies to all nondomestic dischargers to POTWs. Section 403.5(b)(2) prohibits the discharge of "pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharges."

2. What changes did EPA propose?

EPA proposed to allow POTWs with Approved Pretreatment Programs to authorize temporary excursions below pH 5.0 provided that the POTW maintain a written technical evaluation supporting the finding that the alternative pH requirements did not have the potential to cause corrosive structural damage to the POTW or otherwise violate 40 CFR 403.5(a) and (b). This change would have allowed POTWs to accept Discharges below pH 5.0 from Industrial Users that continuously monitored the pH of their Discharges, or to accept such temporary excursions by a limited group of Industrial Users. EPA proposed that any alternative pH requirement developed by a POTW would be enforceable as a Pretreatment Standard under the Clean Water Act. (The general narrative prohibition against pollutants that cause corrosive structural damage at 40 CFR 403.5(b)(2) would still have applied.)

3. What action is EPA taking today?

EPA has decided not to adopt any changes to 40 CFR 403.5(b)(2). The existing specific prohibition against Discharges with pH lower than 5.0 will remain in effect.

In arriving at this decision, EPA has found that most of the current literature on the relationship between low pH and corrosion of sewer pipes is general and qualitative. References rarely address short-term Discharges of low pH and tend to only discuss effects of continuous exposure. Furthermore, predicting the effects of corrosion on POTW sewer pipes is complicated by a variety of factors, including wastewater characteristics such as pH, temperature, volume, velocity, turbulence, alkalinity, dissolved oxygen, as well as sewer pipe characteristics such as size, age, material of construction, pipe configuration, and time since last cleaning. EPA has concluded that insufficient research is available that investigates the synergistic effects of these factors as well as data on the effects of short-term Discharges of low pH and therefore modifications to the current regulations are not appropriate at this time.

What significant changes were made to the proposed rule?

EPA has decided not to change the current rule regarding Discharges less than pH 5.0. EPA lacks sufficient information on the effects of short-term or long-term Discharges with pH lower than 5.0 on the structural integrity of POTWs. The current regulations at 40 CFR 403.5(b) remain in effect.

4. Summary of Major Comments and EPA Response

Many commenters gave qualified support for the proposed modifications with suggestions for implementation. EPA also received comments on the proposed rule stating that the proposal did not adequately protect POTWs. One commenter cautioned that systems constructed of acid-resistant materials often include manhole inverts constructed of concrete and similar materials that are susceptible to corrosion, and are thus rarely entirely resistant to such effects. Some requested that EPA make the current pH limit more stringent (*i.e.*, above pH 5.0) because there are systems that are currently experiencing corrosion damage. A few commenters questioned whether the proposed modifications would actually provide a significant burden relief for POTWs, on the basis that adequate evidence does not exist that shows POTWs devote a substantial amount of resources to dealing with short-term violations. Several commenters requested guidance on various implementation topics,

including how POTWs should assess and maintain the integrity of their systems with respect to corrosion. These outstanding issues influenced EPA's decision not to finalize the proposed modifications at this time.

Even though EPA has decided not to finalize this proposed provision, all comments that were submitted on the proposal will be carefully considered as EPA further explores the issue of short-term pH Discharges. Please see the Response to Public Comment Document for responses to specific comments.

Application of 40 CFR 401.17 Criteria: Some commenters suggested that the pH provisions at 40 CFR 401.17 could serve as a basis for alternative pH requirements. The effluent guideline regulations list certain conditions under which excursions from pH limits are allowed for direct dischargers. EPA developed 40 CFR 401.17 based on the Agency's determination that direct dischargers could continuously meet a pH limit between 6.0 and 9.0. In comparison, Pretreatment requirements are based on preventing corrosion in POTWs and are much less restrictive. It is EPA's view that it would be inappropriate to attempt to use 40 CFR 401.17 as a basis for alternative pH requirements because the reason behind establishing the pH requirement is different. However, POTWs may implement and enforce local pH limits in a manner that is more stringent than the federal regulations. EPA refers commenters to EPA's May 13, 1993 letter to Mary Jo M. Aiello of the New Jersey Department of Environmental Protection and Energy, for a discussion of an acceptable analogous application to the Pretreatment program. See *http://www.epa.gov/npdes/pubs/owm0113.pdf.*

Use of Enforcement Response Plans to Address pH Violations: Several POTW commenters expressed concern over the level of burden imposed on them by the existing pH limit since they are obligated to treat all exceedances as violations. In EPA's view, it is relevant to clarify the inherent flexibility present in a POTW's Enforcement Response Plan provisions to define varying levels of response to temporary pH violations. EPA advises POTWs to incorporate a preferred method of dealing with violations of local limits into their Enforcement Response Plans and refers commenters to the Guidance for Developing Control Authority Enforcement Response Plans (EPA, 1989). See *http://www.epa.gov/npdes/pubs/owm0015.pdf.* EPA notes that POTWs make their own decisions regarding the utilization of resources in response to low pH Discharges when developing an Enforcement Response Plan. Excursions under pH 5.0 are Pretreatment Standard violations (40 CFR 403.5(b)(2)), and, in determining the appropriate response, EPA recommends that the Control Authority consider the following criteria: frequency, duration, magnitude, effect, and/or compliance. A record should be made of the response, and the person responsible for screening the data should alert enforcement personnel to the noncompliance. EPA recognizes that the Control Authority's appropriate response (including no further action, a phone call, or a notification letter) may vary. This flexibility may help reduce the burdens on the commenters' programs.

V. Changes to Part 122

EPA is also making the following changes to the part 122 regulations:

- 40 CFR 122.21(j)(6)(ii): Change reference to definition of "Significant Industrial User" to 40 CFR 403.3(v), instead of 40 CFR 403.3(t). This reference change is a direct result of renumbering associated with today's rule.
- 40 CFR 122.44(j)(1): Correct typographical error referring to "significant indirect dischargers" instead of the correct term, "Significant Industrial Users discharging".
- 40 CFR122.62(a)(7): Correct typographical error referencing an incorrect provision relating to modifications. The correct reference should be 40 CFR 403.18(e).

VI. Considerations in Adopting Today's Rule Revisions

How does a POTW adopt today's rule provisions?

Section 40 CFR 403.18(a) generally requires review and approval by the Approval Authority of modifications to the POTW Pretreatment Program when there is a "significant change in the operation of a POTW Pretreatment Program that differs from the information in the POTW's [program] submission * * *." Consistent with this rule, before many of today's streamlining provisions may be implemented by local Pretreatment authorities, POTWs will need to modify their Pretreatment Program procedures and authorities. Once the POTW has determined what program revisions it will make in response to today's streamlining provisions, the modifications must then be submitted to the Approval Authority (either the State, if it has Pretreatment Program authority, or the EPA Regional Administrator) for approval. The regulations also require that the program modification be accompanied by a statement of basis for the changes, a description of the modifications and other information the Approval Authority may request as appropriate. See 40 CFR 403.18(c)(1).

Although not required as part of today's final rule, EPA encourages a POTW to submit its Pretreatment Program modifications to its Approval Authority as a package, rather than sending changes piecemeal. This will help make the review process more efficient and less burdensome.

Is the POTW required to make any of today's streamlining changes?

EPA notes that many of today's streamlining provisions are changes that the POTW may adopt at its discretion. Many of these changes (*e.g.*, the authority to use general control mechanisms, monitoring waivers for pollutants neither present nor expected to be present, BMPs in lieu of numeric local limits, application of equivalent concentration limits in place of flow-based mass limits for OCPSF, petroleum refining, or pesticide chemicals facilities, creation of a category of non-significant CIUs, and application of equivalent mass limits for concentration based categorical Standards) involve features that provide program flexibility and are not required to be incorporated into the POTW's Pretreatment Program.

However, a few of today's rule provisions are changes that the POTW is required to make because they clarify certain minimum requirements, and to the extent that the POTW's approved program is inconsistent with these requirements, it would need to be modified. These required changes include:

(1) 40 CFR 403.8(f)(1)(iii)(B)(6): Clarification that slug control requirements must be referenced in SIU control mechanisms. The POTW is required to adopt this change because it specifies new minimum requirements for all SIU control mechanisms.

(2) 40 CFR 403.8(f)(2)(viii)(A)(B)(C): Revisions to the significant noncompliance (SNC) definition. These revisions are required because they expand the definition of SNC to include additional types of Pretreatment Standards and Requirements which were not clearly covered in previous definitions.

(3) 40 CFR 403.12(g): Modifications to the sampling requirements and a clarification to the requirement to report all monitoring results. SIUs are now required to follow sampling requirements in 40 CFR 403.12 for periodic compliance reports (40 CFR 403.12(e)), whereas they were

previously only explicitly applicable to baseline monitoring reports and 90-day compliance reports. Also, the final rule now requires that non-categorical SIUs report all monitoring results, whereas the previous regulations only made this requirement explicit for categorical SIUs. The POTW is required to adopt these revisions because they set new minimum requirements for sampling and notification.

What is the difference between a "substantial modification" and a "non-substantial" modification?

Different review procedures apply to program modifications depending on whether the modification is substantial or non-substantial.

The Approval Authority's review of a substantial modification, unlike a non-substantial modification, must follow the same procedures used for approving the initial POTW Pretreatment Program, including the issuance of a public notice to inform the public of the POTW's modification Submission. By contrast, where the Submission is reviewed as a non-substantial modification, the Approval Authority has 45 days to either approve or disapprove the modification. Where the Approval Authority does not notify the POTW within 45 days of its decision to approve or disapprove the modification, or to treat the modification as substantial, the POTW may implement the modification as if it were approved by the Approval Authority.

How will the POTW's adoption of today's streamlining provisions be reviewed by the Approval Authority?

EPA has concluded that all of the changes related to today's rule may be treated as non-substantial if the changes to a POTW's local ordinance to incorporate the changes directly reflect the federal requirements. The current regulations provide that modifications that relax a POTW's legal authorities are substantial modifications "except for modifications that directly reflect a revision to this Part 403 or to 40 CFR Chapter I, subchapter N, and are reported pursuant to paragraph (d) of this section." EPA has explained its reasons for adopting this provision as follows:

• "Today's regulation excludes from the definition of 'substantial modification' those changes in POTW legal authority that results in less prescriptive programs, but which directly reflect a revision to Federal Pretreatment Regulations (for example, if the federal regulations are streamlined). 40 CFR 403.18(b)(1). Such modifications would have already undergone public notice and comment when promulgated by EPA. As long as the POTW's local ordinance is revised to directly reflect the new federal requirements, further public notice would be unnecessary * * *." 62 FR 38406, 38409 (July 17, 1997).

The Approval Authority, however, may treat such modifications as substantial when appropriate. 40 CFR 403.18(b)(7) authorizes the Approval Authority to designate modifications as substantial if the Approval Authority concludes that the modification could have a significant effect on POTW operation, could result in an increase in POTW pollutant loadings or could result in less stringent requirements being imposed on Industrial Users. For example, a POTW may wish to make adjustments to the wording of some of the streamlining provisions so that they fit better with the way the specific Pretreatment program is operated. Such adjustments may or may not trigger the need to review individual modifications as substantial, which would not otherwise need to be treated as substantial if today's provisions are adopted directly.

Will the POTW's NPDES Permit need to be modified? In general, the Pretreatment provisions of the POTW's NPDES Permit will need to be modified. This regulatory action does not modify individual state regulations or authorities, POTW legal authorities, nor modify NPDES Permits issued to POTWs. Consequently, today's rule does not relieve a POTW from operating in accordance with existing state laws, regulations, Permits, and similar actions. If a POTW's Pretreatment program "modification relates to an enforceable element of the POTW's NPDES Permit", then the program "modification requires a permit modification," in accordance with 40 CFR 403.8(c). 62 FR 38408 (July 17, 1997). After a POTW's Pretreatment program modification has been approved in accordance with the procedures in 40 CFR 403.18, those conditions may be incorporated into the POTW's NPDES Permit as a minor NPDES modification under 40 CFR 122.63(g).

VII. Regulatory Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 **Federal Register** 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0009.

The regulatory changes in today's rulemaking are designed to reduce the overall burden from technical and administrative requirements that affect Industrial Users, local Control Authorities and Approval Authorities. The estimated savings in annual burden hours and costs to the affected respondents (*i.e.*, Industrial Users, POTWs, and States) is about 240,000 hours or $10.1 million.

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.

Although the regulatory changes in today's final rule provide greater flexibility to regulated entities, it is necessary to collect certain types of information to assure that Pretreatment Program requirements continue to be met and that the final benefit meets EPA's stated goal of providing better environmental results at less cost.

Today's final rule includes regulatory changes that cover a variety of technical and administrative changes. Most of the regulatory changes result in either reduced annual cost and burdens on a continuing basis or have no measurable effect on cost or burden. There are a few regulatory changes (equivalent concentration limits for flow based Standards, monitoring waivers for pollutants not present, and general control mechanisms) that will impose additional short-term increases in burden on those POTWs or Industrial Users that elect to exercise this flexibility. However, when considered over a longer time period, these costs are outweighed by the expected benefits of the provisions.

The table below (Table 1) shows an estimate of burden hours and cost savings for each rule provision.

TABLE 1.—ESTIMATED CHANGES IN BURDEN AND COST

Provision	Total respondents			Change in total number of responses	Hours per response	Annual responses per respondent	Change in burden
	States	POTWs	IUs				
Mass Limits		24	40	80 over 3 yrs	8	Varies	512
Equivalent Concentration Limits.		1,464		15	8.0	0.01	122.67
NSCIUs/Middle-Tier CIUs	34	1,464	2,374	NA	See Note 1	Varies	−113,381
Slug Control Plans	34	1,464		−13,394	0.5	1	−6,697
Pollutants Not Present—CIUs.	34	1,464	12,362	NA	See Note 2	2	−117,703
General Control Mech's, Savings for CAs.	34	20		1,500	−20.0	0.2	−6,000
General Control Mech's, Requests for Coverage.			1,500	1,500 over 3 yrs	0.5	One-Time	250
General Control Mech's, CA Use of Data.	34	20		1,500 over 3 yrs	0.5	One-Time	250
Total	34	1,464	12,362				−242,645

Note 1: For 34 states, the annual number of responses for permit issuance (20 hrs) drops by 0.6 per state. For 34 states, the number of inspections per year (8 hours) drops by 4.6 per state. For 34 states, the number of CIUs sampled per year (15.2 hours) drops by 4.6 per state. For 34 states, the number of NSCIU evaluations (2 hours) increases by 3.0 per state. For 34 states, total hours for review of CIU monitoring reports drops by 424 hours per year. For 1,464 POTWs, the annual number of responses for permit issuance (20 hrs) drops by 0.15 per POTW. For 1,464 POTWs, the number of inspections per year (8 hours) drops by 1.1 per POTW. For 1,464 POTWs, the number of CIUs sampled per year (16.2 hours) drops by 1.1 per POTW. For 1,464 POTWs, the number of NSCIU evaluations (2 hours) rises from 0 to 0.73 per POTW. POTW burden for review of CIU monitoring reports drops a total of 8,664 hours. In addition, 796 CIUs reduce sampling and analysis (15.6 hours) from twice per year to never, 372 CIUs reduce sampling and analysis from twice per year to once every 5 years, and 1,206 CIUs reduce monitoring from twice to once per year. Also, 2,374 CIUs reduce reporting (1 hour) from twice to once per year. IU recordkeeping is eliminated for 1,168 IUs, saving 2337 hours (2 hrs per IU) per year; state recordkeeping decreases by 513 hours per year. POTW recordkeeping is assumed to be unchanged.

Note 2: Hours per response drops from 18.8 to 15.2 for states, 10.0 to 8.1 for POTWs, and 14.3 to 11.6 for CIUs.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standard; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

As previously explained, the modifications to the Pretreatment requirements in this final rule will reduce the regulatory costs to POTWs and Industrial Users of complying with Pretreatment requirements. The regulatory changes will provide certain POTWs and Industrial Users with less costly alternatives to the current requirements. For example, this rule includes a modification that would allow a POTW, in specified

circumstances, to control contributions from Industrial Users through general permits or control mechanisms rather than more costly individual permits or control mechanisms. This rule also authorizes a POTW to relieve an Industrial User of its sampling and analyzing requirements if the User demonstrates and certifies that the pollutant is neither present nor expected to be present in its process waste stream or is present only in background levels in the intake water.

The final rule includes provisions that provide flexibility for POTWs and Industrial Users. For instance, POTWs will be allowed to use Best Management Practices (BMPs) as local limits in lieu of numeric effluent limits. This option will give POTWs a feasible alternative when numeric local limits are not the appropriate or practical method to prevent pollutant Pass Through or Interference. EPA does not expect that any POTW or Industrial User will choose the voluntary regulatory requirements over current requirements if the cost of the alternative were greater than the cost of complying with current regulations. We have therefore concluded that today's final rule will either relieve regulatory burden or have no significant impact for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's final rule is "deregulatory" in nature and reduces burden on the affected State, local, and tribal governments and the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Additional flexibility is granted to all POTWs, which will provide opportunities for reducing the burden of administering their Pretreatment programs.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule is basically deregulatory in nature and is expected to reduce administrative and resource burdens on affected State, local, and tribal governments and the private sector. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State and local officials in developing this rule. Annual EPA/State National Pretreatment Workshops have provided the opportunity for EPA and States to discuss current technical and policy issues as well as the future direction of the National Pretreatment Program. Representatives of EPA, States, and local Pretreatment programs have also convened annually at the Association of Metropolitan Sewerage Agencies' (AMSA's) Pretreatment Workshop. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communication between EPA and State and local governments, EPA solicited comment on the proposed rule from all stakeholders. A summary of EPA's response to concerns raised is provided in Sections III and IV of the preamble (see specifically subsections entitled "Summary of Major Comments and EPA Response" for each separate streamlining issue) and in the response to comment document in the record.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. 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, as specified in Executive Order 13175. There are no Pretreatment programs administered by Indian tribal governments. This final rule will neither "significantly nor uniquely" affect the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

Moreover, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited comment on the proposed rule from all stakeholders. EPA did not receive any comments from tribal governments.

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

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This final rule does not impose any new or amended Standards for discharged wastewater or the sludge resulting from treatment of a POTW. (EPA notes that the final rule does enable POTWs to use alternative, equivalent concentration limits for an industry's current flow-based mass Standards and equivalent mass limits where conditions warrant. However, EPA considers these new limits to be equivalent to the Standards previously used, and therefore does not involve the establishment of new or amended Standards.) Treatment and disposal of wastewater occurs in a restricted system (*e.g.*, buried sewer lines and fenced wastewater treatment facilities) that children are unlikely to come in contact with on a routine basis. This rule has no identifiable direct impact upon the health and/or safety risks to children and the regulatory changes will not disproportionately affect children.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The final rule does not contain any compliance requirements that will:

1. Reduce crude oil supply in excess of 10,000 barrels per day;
2. Reduce fuel production in excess of 4,000 barrels per day;
3. Reduce coal production in excess of 5 million tons per year;
4. Reduce electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity;
5. Increase energy prices in excess of 10 percent;
6. Increase the cost of energy distribution in excess of 10 percent;
7. Significantly increase dependence on foreign supplies of energy; or
8. Other similar adverse outcomes, particularly unintended ones.

Thus, EPA has concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards, except to the extent that various sampling procedures in the Pretreatment Regulations are being updated to reflect current EPA methods. Therefore, EPA did not consider the use of any voluntary consensus standards.

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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A Major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on November 14, 2005.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 403

Environmental protection, Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: September 27, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671, 21 U.S.C 331j, 356a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding an entry in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paper Work Reduction Act.

* * * * *

40 CFR citation	OMB control No.
General Pretreatment Regulations for Existing and New Sources of Pollution	
* * * * * * *	
403.12(q)	2040–0009
* * * * * * *	

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 3. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 4. Section 122.21 is amended by revising paragraph (j)(6)(ii) introductory text to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(j) * * *

(6) * * *

(ii) POTWs with one or more SIUs shall provide the following information for each SIU, as defined at 40 CFR 403.3(v), that discharges to the POTW:

* * * * *

■ 5. Section 122.44 is amended by revising the first sentence of paragraph (j)(1) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(j) * * *

(1) Identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under section 307(b) of CWA and 40 CFR part 403.

* * * * *

■ 6. Section 122.62 is amended by revising paragraph (a)(7) to read as follows:

§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

* * * * *

(a) * * *

(7) *Reopener.* When required by the "reopener" conditions in a permit, which are established in the permit under § 122.44(b) (for CWA toxic effluent limitations and Standards for sewage sludge use or disposal, see also § 122.44(c)) or 40 CFR 403.18(e) (Pretreatment program).

* * * * *

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

■ 7. The authority for Part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 8. Section 403.3 is amended by redesignating paragraphs (e) through (u) as paragraphs (g) through (w); by revising newly designated paragraphs (m)(2) and (v); and by adding new paragraphs (e) and (f) to read as follows:

§ 403.3. Definitions.

* * * * *

(e) The term *Best Management Practices* or *BMPs* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in § 403.5(a)(1) and (b). BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

(f) The term *Control Authority* refers to:

(1) The POTW if the POTW's Pretreatment Program Submission has been approved in accordance with the requirements of § 403.11; or

(2) The Approval Authority if the Submission has not been approved.

* * * * *

(m) * * *

(2) Construction on a site at which an existing source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (m)(1)(ii) or (m)(1)(iii) of this section, but otherwise alters, replaces, or adds to existing process or production equipment.

* * * * *

(v) *Significant Industrial User.* (1) Except as provided in paragraphs (v)(2) and (v)(3) of this section, the term Significant Industrial User means:

(i) All Industrial Users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and

(ii) Any other Industrial User that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW Treatment plant; or is designated as such by the Control Authority on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(2) The Control Authority may determine that an Industrial User subject to categorical Pretreatment Standards under § 403.6 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

(i) The Industrial User, prior to the Control Authority's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;

(ii) The Industrial User annually submits the certification statement required in § 403.12(q) together with any additional information necessary to support the certification statement; and

(iii) The Industrial User never discharges any untreated concentrated wastewater.

(3) Upon a finding that an Industrial User meeting the criteria in paragraph (v)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or

requirement, the Control Authority may at any time, on its own initiative or in response to a petition received from an Industrial User or POTW, and in accordance with 40 CFR 403.8(f)(6), determine that such Industrial User is not a Significant Industrial User.

* * * * *

■ 9. Section 403.5 is amended by revising paragraph (b)(1) and adding a new paragraph (c)(4) to read as follows:

§ 403.5 National pretreatment standards: Prohibited discharges.

* * * * *

(b) * * *

(1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21;

* * * * *

(c) * * *

(4) POTWs may develop Best Management Practices (BMPs) to implement paragraphs (c)(1) and (c)(2) of this section. Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this part and section 307(d) of the Act.

* * * * *

■ 10. Section 403.6 is amended as follows:

■ a. By revising paragraph (b).

■ b. By revising paragraph (c)(2).

■ c. By redesignating paragraphs (c)(5) through (c)(7) as paragraphs (c)(7) through (c)(9).

■ d. By adding new paragraphs (c)(5) and (c)(6).

■ e. By revising newly designated paragraphs (c)(7) and (c)(8).

■ f. By revising paragraph (d), and the first sentence of paragraph (e) introductory text.

§ 403.6 National pretreatment standards: Categorical standards.

* * * * *

(b) *Deadline for compliance with categorical standards.* Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR chapter I, subchapter N. Direct dischargers with NPDES Permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in § 403.3(m). New Sources shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards.

(c) * * *

(2) When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

* * * * *

(5) When the limits in a categorical Pretreatment Standard are expressed only in terms of pollutant concentrations, an Industrial User may request that the Control Authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Control Authority. The Control Authority may establish equivalent mass limits only if the Industrial User meets all the following conditions in paragraph (c)(5)(i)(A) through (c)(5)(i)(E) of this section.

(i) To be eligible for equivalent mass limits, the Industrial User must:

(A) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

(B) Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;

(C) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and long-term average production rate must be representative of current operating conditions;

(D) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and

(E) Have consistently complied with all applicable categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.

(ii) An Industrial User subject to equivalent mass limits must:

(A) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

(B) Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

(C) Continue to record the facility's production rates and notify the Control Authority whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in paragraph (c)(5)(i)(C) of this section. Upon notification of a revised production rate, the Control Authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

(D) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to paragraph (c)(5)(i)(A) of this section so long as it discharges under an equivalent mass limit.

(iii) A Control Authority which chooses to establish equivalent mass limits:

(A) Must calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average Standard for the applicable categorical Pretreatment Standard and the appropriate unit conversion factor;

(B) Upon notification of a revised production rate, must reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

(C) May retain the same equivalent mass limit in subsequent control mechanism terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to paragraph (d) of this section. The Industrial User must also be in compliance with § 403.17 (regarding the prohibition of bypass).

(iv) The Control Authority may not express limits in terms of mass for

pollutants such as pH, temperature, radiation, or other pollutants which cannot appropriately be expressed as mass.

(6) The Control Authority may convert the mass limits of the categorical Pretreatment Standards at 40 CFR parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Industrial Users under the following conditions. When converting such limits to concentration limits, the Control Authority must use the concentrations listed in the applicable subparts of 40 CFR parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by paragraph (d) of this section.

(7) Equivalent limitations calculated in accordance with paragraphs (c)(3), (c)(4), (c)(5) and (c)(6) of this section are deemed Pretreatment Standards for the purposes of section 307(d) of the Act and this part. The Control Authority must document how the equivalent limits were derived and make this information publicly available. Once incorporated into its control mechanism, the Industrial User must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(8) Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

* * * * *

(d) *Dilution prohibited as substitute for treatment.* Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a Discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The Control Authority may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.

(e) *Combined wastestream formula.* Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the Control Authority or by the Industrial User with the written concurrence of the Control Authority. * * *

* * * * *

■ 11. Section 403.7 is amended by revising paragraphs (h) introductory text and (h)(2) to read as follows:

§ 403.7 Removal credits.

* * * * *

(h) *Compensation for Overflow.* "Overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW Treatment Plant. POTWs which at least once annually Overflow untreated wastewater to receiving waters may claim Consistent Removal of a pollutant only by complying with either paragraphs (h)(1) or (h)(2) of this section. However, paragraph (h) of this section shall not apply where Industrial User(s) can demonstrate that Overflow does not occur between the Industrial User(s) and the POTW Treatment Plant;

* * * * *

(2)(i) The Consistent Removal claimed is reduced pursuant to the following equation:

$$r_c = r_m \frac{8760 - Z}{8760}$$

Where:

r_m = POTW's Consistent Removal rate for that pollutant as established under paragraphs (a)(1) and (b)(2) of this section

r_c = removal corrected by the Overflow factor

Z = hours per year that Overflows occurred between the Industrial User(s) and the POTW Treatment Plant, the hours either to be shown in the POTW's current NPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular Industrial User's Discharge Overflows between the Industrial User and the POTW Treatment Plant; and

(ii) The POTW is complying with all NPDES permit requirements and any additional requirements in any order or decree, issued pursuant to the Clean Water Act affecting combined sewer overflows. These requirements include, but are not limited to, any combined sewer overflow requirements that conform to the Combined Sewer Overflow Control Policy.

■ 12. Section 403.8 is amended as follows:

■ a. By revising paragraphs (f)(1)(iii), (f)(1)(v), and the first sentence of paragraph (f)(1)(vi)(B).

■ b. By revising paragraph (f)(2)(v).

■ c. By redesignating paragraphs (f)(2)(vi) and (f)(2)(vii) as paragraphs (f)(2)(vii) and (f)(2)(viii);

■ d. By adding a new paragraph (f)(2)(vi).

■ e. By revising newly designated paragraphs (f)(2)(viii) introductory text, (f)(2)(viii)(A), (f)(2)(viii)(B), (f)(2)(viii)(C), (f)(2)(viii)(F), and (f)(2)(viii)(H).

■ f. Revising paragraph (f)(6).

§ 403.8 Pretreatment Program Requirements: Development and implementation by POTW.

* * * * *

(f) * * *

(1) * * *

(iii) Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under § 403.3(v), this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such User except as follows.

(A)(*1*) At the discretion of the POTW, this control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:

(*i*) Involve the same or substantially similar types of operations;

(*ii*) Discharge the same types of wastes;

(*iii*) Require the same effluent limitations;

(*iv*) Require the same or similar monitoring; and

(*v*) In the opinion of the POTW, are more appropriately controlled under a general control mechanism than under individual control mechanisms.

(*2*) To be covered by the general control mechanism, the Significant Industrial User must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with § 403.12(e)(2) for a monitoring waiver for a pollutant neither present nor expected to be present in the Discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the Discharge is not effective in the general control mechanism until after the POTW has provided written notice to the Significant Industrial User that such a waiver request has been

granted in accordance with § 403.12(e)(2). The POTW must retain a copy of the general control mechanism, documentation to support the POTW's determination that a specific Significant Industrial User meets the criteria in paragraphs (f)(1)(iii)(A)(*1*) through (*5*) of this section, and a copy of the User's written request for coverage for 3 years after the expiration of the general control mechanism. A POTW may not control a Significant Industrial User through a general control mechanism where the facility is subject to production-based categorical Pretreatment Standards or categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for Industrial Users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations (§§ 403.6(e) and 403.15).

(B) Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:

(1) Statement of duration (in no case more than five years);

(2) Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

(3) Effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards in part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;

(4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the Discharge in accordance with § 403.12(e)(2), or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general Pretreatment Standards in part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;

(5) Statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines;

(6) Requirements to control Slug Discharges, if determined by the POTW to be necessary.

* * * * *

(v) Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under § 403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;

(vi) * * *

(B) Pretreatment requirements which will be enforced through the remedies set forth in paragraph (f)(1)(vi)(A) of this section, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or these regulations in this part. * * *

* * * * *

(2) * * *

(v) Randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in order to identify, independent of information supplied by Industrial Users, occasional and continuing noncompliance with Pretreatment Standards. Inspect and sample the effluent from each Significant Industrial User at least once a year, except as otherwise specified below:

(A) Where the POTW has authorized the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard in accordance with § 403.12(e)(3), the POTW must sample for the waived pollutant(s) at least once during the term of the Categorical Industrial User's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the Industrial User's wastewater based on changes that occur in the User's operations, the POTW must immediately begin at least annual effluent monitoring of the User's Discharge and inspection.

(B) Where the POTW has determined that an Industrial User meets the criteria for classification as a Non-Significant Categorical Industrial User, the POTW must evaluate, at least once per year, whether an Industrial User continues to meet the criteria in § 403.3(v)(2).

(C) In the case of Industrial Users subject to reduced reporting requirements under § 403.12(e)(3), the POTW must randomly sample and analyze the effluent from Industrial Users and conduct inspections at least once every two years. If the Industrial User no longer meets the conditions for reduced reporting in § 403.12(e)(3), the POTW must immediately begin sampling and inspecting the Industrial User at least once a year.

(vi) Evaluate whether each such Significant Industrial User needs a plan or other action to control Slug Discharges. For Industrial Users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2006; additional Significant Industrial Users must be evaluated within 1 year of being designated a Significant Industrial User. For purposes of this subsection, a Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, local limits or Permit conditions. The results of such activities shall be available to the Approval Authority upon request. Significant Industrial Users are required to notify the POTW immediately of any changes at its facility affecting potential for a Slug Discharge. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

(A) Description of discharge practices, including non-routine batch Discharges;

(B) Description of stored chemicals;

(C) Procedures for immediately notifying the POTW of Slug Discharges, including any Discharge that would violate a prohibition under § 403.5(b) with procedures for follow-up written notification within five days;

(D) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response;

* * * * *

(viii) Comply with the public participation requirements of 40 CFR part 25 in the enforcement of National Pretreatment Standards. These

procedures shall include provision for at least annual public notification in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW of Industrial Users which, at any time during the previous 12 months, were in significant noncompliance with applicable Pretreatment requirements. For the purposes of this provision, a Significant Industrial User (or any Industrial User which violates paragraphs (f)(2)(viii)(C), (D), or (H) of this section) is in significant noncompliance if its violation meets one or more of the following criteria:

(A) Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

(B) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(C) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);

* * * * *

(F) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

* * * * *

(H) Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment program.

* * * * *

(6) The POTW shall prepare and maintain a list of its Industrial Users meeting the criteria in § 403.3(v)(1). The list shall identify the criteria in § 403.3(v)(1) applicable to each Industrial User and, where applicable, shall also indicate whether the POTW has made a determination pursuant to § 403.3(v)(2) that such Industrial User should not be considered a Significant Industrial User. The initial list shall be submitted to the Approval Authority pursuant to § 403.9 or as a non-substantial modification pursuant to § 403.18(d). Modifications to the list shall be submitted to the Approval Authority pursuant to § 403.12(i)(1).

■ 13. Section 403.12 is amended as follows:

■ a. By removing and reserving paragraph (a).

■ b. By revising paragraphs (b)(4)(ii) and (b)(5)(ii).

■ c. By removing paragraph (b)(5)(iii).

■ d. By redesignating paragraphs (b)(5)(iv) through (b)(5)(viii) as paragraphs (b)(5)(iii) through (b)(5)(vii).

■ e. By revising paragraph (b)(6).

■ f. By revising paragraph (e)(1).

■ g. By redesignating paragraphs (e)(2) and (e)(3) as paragraphs (e)(3) and (e)(4).

■ h. By adding a new paragraph (e)(2).

■ i. Revising newly designated paragraph (e)(3).

■ j. Revising paragraphs (g)(1), (g)(2) and (g)(3).

■ k. By redesignating paragraphs (g)(4) and (g)(5) as paragraphs (g)(5) and (g)(6).

■ l. By revising newly designated paragraph (g)(6).

■ m. By adding paragraph (g)(4).

■ n. By revising paragraph (h).

■ o. By revising paragraph (i)(1).

■ p. By revising paragraph (j).

■ q. By revising paragraph (k)(2).

■ r. By revising paragraphs (l) introductory text, (1)(1) introductory text, (l)(1)(ii), (l)(2), (m), (o)(1) introductory text, and the first sentence of paragraph (o)(2).

■ s. By adding paragraph (q).

§ 403.12 Reporting requirements for POTWs and Industrial Users.

* * * * *

(b) * * *

(4) * * *

(ii) Other streams as necessary to allow use of the combined wastestream formula of § 403.6(e). (See paragraph (b)(5)(iv) of this section.)

* * * * *

(5) * * *

(ii) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the applicable Standards to determine compliance with the Standard;

* * * * *

(6) *Certification.* A statement, reviewed by an authorized representative of the Industrial User (as defined in paragraph (l) of this section) and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional Pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements; and

(e) * * *

(1) Any Industrial User subject to a categorical Pretreatment Standard (except a Non-Significant Categorical User as defined in § 403.3(v)(2)), after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may modify the months during which the above reports are to be submitted.

(2) The Control Authority may authorize the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if

the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:

(i) The Control Authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.

(ii) The monitoring waiver is valid only for the duration of the effective period of the Permit or other equivalent individual control mechanism, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.

(iii) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

The request for a monitoring waiver must be signed in accordance with paragraph (l) of this section and include the certification statement in § 403.6(a)(2)(ii). Non-detectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

(iv) Any grant of the monitoring waiver by the Control Authority must be included as a condition in the User's control mechanism. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the Control Authority for 3 years after expiration of the waiver.

(v) Upon approval of the monitoring waiver and revision of the User's control mechanism by the Control Authority, the Industrial User must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under 40 CFR 403.12(e)(1).

(vi) In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the User's operations, the User must immediately: Comply with the monitoring requirements of paragraph (e)(1) of this section or other more frequent monitoring requirements imposed by the Control Authority; and notify the Control Authority.

(vii) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

(3) The Control Authority may reduce the requirement in paragraph (e)(1) of this section to a requirement to report no less frequently than once a year, unless required more frequently in the Pretreatment Standard or by the Approval Authority, where the Industrial User meets all of the following conditions:

(i) The Industrial User's total categorical wastewater flow does not exceed any of the following:

(A) 0.01 percent of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the Industrial User discharges in batches;

(B) 0.01 percent of the design dry weather organic treatment capacity of the POTW; and

(C) 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical Pretreatment Standard for which approved local limits were developed by a POTW in accordance with § 403.5(c) and paragraph (d) of this section;

(ii) The Industrial User has not been in significant noncompliance, as defined in § 403.8(f)(2)(viii), for any time in the past two years;

(iii) The Industrial User does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period pursuant to paragraph (g)(3) of this section;

(iv) The Industrial User must notify the Control Authority immediately of any changes at its facility causing it to no longer meet conditions of paragraphs (e)(3)(i) or (ii) of this section. Upon notification, the Industrial User must immediately begin complying with the minimum reporting in paragraph (e)(1) of this section; and

(v) The Control Authority must retain documentation to support the Control Authority's determination that a specific Industrial User qualifies for reduced reporting requirements under paragraph (e)(3) of this section for a period of 3 years after the expiration of the term of the control mechanism.

* * * * *

(g) * * *

(1) Except in the case of Non-Significant Categorical Users, the reports required in paragraphs (b), (d), (e), and (h) of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. This sampling and analysis may be performed by the Control Authority in lieu of the Industrial User. Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the User will not be required to submit the compliance certification required under paragraphs (b)(6) and (d) of this section. In addition, where the POTW itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.

(2) If sampling performed by an Industrial User indicates a violation, the User shall notify the Control Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation. Where the Control Authority has performed the sampling and analysis in lieu of the Industrial User, the Control Authority must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Resampling is not required if:

(i) The Control Authority performs sampling at the Industrial User at a frequency of at least once per month; or

(ii) The Control Authority performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the Control Authority receives the results of this sampling.

(3) The reports required in paragraphs (b), (d), (e) and (h) of this section must be based upon data obtained through appropriate sampling and analysis

performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the Discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate.

(4) For sampling required in support of baseline monitoring and 90-day compliance reports required in paragraphs (b) and (d) of this section, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by paragraphs (e) and (h) of this section, the Control Authority shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with Applicable Pretreatment Standards and Requirements.

* * * * *

(6) If an Industrial User subject to the reporting requirement in paragraph (e) or (h) of this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Control Authority, using the procedures prescribed in paragraph (g)(5) of this section, the results of this monitoring shall be included in the report.

(h) *Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards.* The Control Authority must require appropriate reporting from those Industrial Users with Discharges that are not subject to categorical Pretreatment Standards. Significant Non-categorical Industrial Users must submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in part 136 and amendments thereto. This sampling and analysis may be performed by the Control Authority in lieu of the significant non-categorical Industrial User.

(i) * * *

(1) An updated list of the POTW's Industrial Users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which Industrial Users are subject to categorical Pretreatment Standards and specify which Standards are applicable to each Industrial User. The list shall indicate which Industrial Users are subject to local standards that are more stringent than the categorical Pretreatment Standards. The POTW shall also list the Industrial Users that are subject only to local Requirements. The list must also identify Industrial Users subject to categorical Pretreatment Standards that are subject to reduced reporting requirements under paragraph (e)(3), and identify which Industrial Users are Non-Significant Categorical Industrial Users.

* * * * *

(j) *Notification of changed Discharge.* All Industrial Users shall promptly notify the Control Authority (and the POTW if the POTW is not the Control Authority) in advance of any substantial change in the volume or character of pollutants in their Discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under paragraph (p) of this section.

(k) * * *

(2) No increment referred to in paragraph (k)(1) of this section shall exceed nine months;

* * * * *

(l) *Signatory requirements for Industrial User reports.* The reports required by paragraphs (b), (d), and (e) of this section shall include the certification statement as set forth in § 403.6(a)(2)(ii), and shall be signed as follows:

(1) By a responsible corporate officer, if the Industrial User submitting the reports required by paragraphs (b), (d), and (e) of this section is a corporation. For the purpose of this paragraph, a responsible corporate officer means:

* * * * *

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) By a general partner or proprietor if the Industrial User submitting the reports required by paragraphs (b), (d), and (e) of this section is a partnership, or sole proprietorship respectively.

* * * * *

(m) *Signatory requirements for POTW reports.* Reports submitted to the Approval Authority by the POTW in accordance with paragraph (i) of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the Pretreatment Program. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the Approval Authority prior to or together with the report being submitted.

* * * * *

(o) * * *

(1) Any Industrial User and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section, including documentation associated with Best Management Practices. Such records shall include for all samples:

* * * * *

(2) Any Industrial User or POTW subject to the reporting requirements established in this section (including documentation associated with Best Management Practices) shall be required to retain for a minimum of 3 years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the Director and the Regional Administrator (and POTW in the case of an Industrial User). * * *

* * * * *

(q) *Annual certification by Non-Significant Categorical Industrial Users.* A facility determined to be a Non-Significant Categorical Industrial User pursuant to § 403.3(v)(2) must annually submit the following certification statement, signed in accordance with the signatory requirements in paragraph (l) of this section. This certification must accompany any alternative report required by the Control Authority:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from _____ _____, to _____, _____ [month, days, year]:

(a) The facility described as _____ [facility name] met the definition of a non-significant categorical Industrial User as described in § 403.3(v)(2); (b) the facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information:

_____

_____

■ 14. Section 403.13 is amended by revising the first sentence of paragraph (g)(3) to read as follows:

§ 403.13 Variances from categorical pretreatment standards for fundamentally different factors.

* * * * *

(g) * * *

(3) Where the User has requested a categorical determination pursuant to § 403.6(a), the User may elect to await the results of the category determination before submitting a variance request under this section. * * *

* * * * *

■ 15. Section 403.15 is revised to read as follows:

§ 403.15 Net/gross calculation.

(a) *Application.* Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this section. Any Industrial User wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (*i.e.*, adjusted to reflect credit for pollutants in the intake water) if the requirements of paragraph (b) of this section are met.

(b) Criteria. (1) Either:

(i) The applicable categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or

(ii) The Industrial User demonstrates that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated. meet the Standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this section.

(4) Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

Appendix A to Part 403 [Removed and Reserved]

■ 16. Appendix A to part 403 is removed and reserved.

■ 17. Appendix G to part 403 is amended as by revising Footnote 1 to Table I to read as follows:

Appendix G to Part 403—Pollutants Eligible for a Removal Credit

I. Regulated Pollutants in Part 503 Eligible for a Removal Credit

* * * * *

1 The following organic pollutants are eligible for a removal credit if the requirements for total hydrocarbons (or carbon monoxide) in subpart E in 40 CFR Part 503 are met when sewage sludge is fired in a sewage sludge incinerator: Acrylonitrile, ldrin/Dieldrin(total), Benzene, Benzidine, Benzo(a)pyrene, Bis(2-chloroethyl)ether, Bis(2-ethylhexyl)phthalate, Bromodichloromethane, Bromoethane, Bromoform, Carbon tetrachloride, Chlordane, Chloroform, Chloromethane, DDD, DDE, DDT, Dibromochloromethane, Dibutyl phthalate, 1,2-dichloroethane, 1,1-dichloroethylene, 2,4-dichlorophenol, 1,3-dichloropropene, Diethyl phthalate, 2,4-dinitrophenol, 1,2-diphenylhydrazine, Din-butyl phthalate, Endosulfan, Endrin, Ethylbenzene, Heptachlor, Heptachlor epoxide, Hexachlorobutadiene, Alphahexachlorocyclohexane, Beta-hexachlorocyclohexane, Hexachlorocyclopentadiene, Hexachloroethane, Hydrogen cyanide, Isophorone, Lindane, Methylene chloride, Nitrobenzene, N-Nitrosodimethylamine, N-Nitrosodi-n-propylamine, Pentachlorophenol, Phenol, Polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzo-p-dioxin, 1,1,2,2,-tetrachloroethane, Tetrachloroethylene, Toluene, Toxaphene, Trichloroethylene, 1,2,4-Trichlorobenzene, 1,1,1-Trichloroethane, 1,1,2-Trichloroethane, and 2,4,6-Trichlorophenol.

* * * * *

[FR Doc. 05–20001 Filed 10–13–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[OW–2005–0024; 7980–3]

RIN 2040–AC58

Availability of and Procedures for Removal Credits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Today's Advance Notice of Proposed Rulemaking (ANPRM) seeks comment on two issues concerning the removal credits provisions in the General Pretreatment Regulations. EPA requests comments on whether to amend the list of pollutants for which removal credits are available to add certain pollutants. The pollutants that the Agency would add are those that EPA previously has determined, after an exposure and hazard screening, would not require sewage sludge regulations. EPA is also soliciting comment on options to amend the "consistent removal" provision in the removal credits regulations that would be consistent with a decision of the U.S. Court of Appeals for the Third Circuit.

DATES: Comments must be received on or before December 13, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OW–2005–0024 by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Agency Web site: http://www.epa.gov/edocket. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: OW-Docket@epa.gov. Please specify Docket ID No. OW–2005–0024 in the body of the message.

Mail or Hand Delivery/Courier: Water Docket, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2005–0024. Please include a total of two copies. Hand deliveries/couriers are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OW–2005–0024. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I.B1 of the preamble.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Jennifer Chan, Water Permits Division, Office of Wastewater Management (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; phone number: (202) 564–0995; fax number: (202) 564–6431; e-mail address: *chan.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this action are governmental entities responsible for implementation of the National Pretreatment Program and industrial facilities subject to Pretreatment Standards and requirements. These entities include:

Category	Examples of regulated entities
Local government	Publicly Owned Treatment Works (POTWs).
State government	States and Tribes acting as Pretreatment Program Control Authorities or as Approval Authorities.
Industry	Industrial Users of POTWs.
Federal Government	EPA Regional Offices Acting as Pretreatment Program Control Authorities or as Approval Authorities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization or facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 403.1 and 40 CFR 403.7. If you have questions about the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible.
8. Make sure to submit your comments by the comment period deadline identified.

II. Overview of Removal Credits

A. What are the Existing Rules Relating to Removal Credits?

Section 307(b)(1) of the Clean Water Act (CWA) directs EPA to establish categorical Pretreatment Standards in order to prevent interference with POTW operation and pass through of inadequately treated pollutants. Because, in certain instances, POTWs could provide some or all of the treatment of an Industrial User's wastewater that would otherwise be required pursuant to the Pretreatment Standard, the Act also authorizes a discretionary program for POTWs to grant "removal credits" to their Industrial Users. Removal credits are a regulatory mechanism by which Industrial Users may discharge a pollutant in quantities that exceed what would otherwise be allowed under an applicable categorical Pretreatment Standard because it has been determined that the POTW to which the Industrial User discharges consistently removes the pollutant.

Section 307(b)(1) establishes a three-part test that a POTW must meet in order to obtain removal credit authority for a given pollutant. Removal credits may be authorized only if (1) the POTW "removes all or any part of such toxic pollutant," (2) the POTW's ultimate Discharge would "not violate that effluent limitation or standard which would be applicable to that toxic pollutant if it were discharged" directly rather than through a POTW, and (3) the POTW's Discharge would "not prevent sludge use and disposal by such [POTW] in accordance with section [405] * * *" (Sec. 307(b)). EPA promulgated removal credit regulation that are codified at 40 CFR 403.7 (See 43 FR 27736, 46 FR 9404, 49 FR 31212, and 52 FR 42434).

Under 40 CFR 403.7, POTWs are authorized to grant removal credits if they meet the conditions outlined in 40 CFR 403.7(a)(3). One condition is POTWs must demonstrate and continue to achieve "consistent removal" of the pollutant. "Consistent removal" is defined at 40 CFR 403.7(b). Another condition is removal credits may only be made available for pollutants that are listed in Appendix G, Table I of Part 403 for the sludge use or disposal practice employed by the POTW, when the requirements in 40 CFR Part 503 are met, or for pollutants listed in Appendix G, Table II of this part when the concentration for a pollutant in the sewage sludge does not exceed the concentration for the pollutant in Appendix G, Table II. In addition, removal credits may be made available for any pollutant in sewage sludge when the POTW disposes all of its sewage sludge in a municipal solid waste landfill unit that meets the criteria in 40 CFR Part 258.

B. Third Circuit Court Decision

The U.S. Court of Appeals for the Third Circuit in *NRDC* v. *EPA*, 790 F.2d 289 (3rd. Cir. 1986), struck down the 1984 provisions of EPA's General Pretreatment regulations (49 FR 31212) concerning removal credits on the grounds that EPA had not promulgated the comprehensive sewage sludge regulations required by CWA section 405 sludge regulations. In the course of the decision, the court also determined that the definition of "consistent removal" in the regulations failed to implement the requirements of the CWA. The court held that the definition violated a statutory requirement that direct and indirect dischargers be held to the same standards and that EPA's definition of consistent POTW removal, *i.e.* removal that is achieved only 50% of the time, violated section 307(b)(1) of the CWA.

In 1987, the Agency replaced the 1984 "consistent removal" provision with the 1981 provision (46 FR 9404). See 52 FR 42434. On February 19, 1993, EPA promulgated the first round of sewage sludge regulations, 40 CFR Part 503, (58 FR 9248) and included those pollutants regulated in 40 CFR Part 503 in Appendix G of 40 CFR Part 403, Table I, Regulated Pollutants in Part 503 Eligible for a Removal Credit. Those pollutants not regulated in 40 CFR Part 503 and that the Agency was no longer considering for the sewage sludge regulations were included in Appendix G of 40 CFR Part 403, Table II, Additional Pollutants Eligible for a Removal Credit.

C. What is the Status of EPA's Review of the Existing Part 503 Sewage Sludge Regulations?

The CWA requires EPA to review the sewage sludge regulations every two years to identify additional toxic pollutants in sewage sludge that may warrant regulation under section 405(d). Under a recent biennial review cycle, EPA evaluated publicly available information on the toxicity, persistence, concentration, mobility, and potential for exposure of additional toxic pollutants in sewage sludge. In a late 2003 **Federal Register** notice, EPA outlined a final action plan (68 FR 75531) for reviewing its sewage sludge regulations in response to a 2002 National Research Council (NRC) report that identified a need to update the scientific basis of Part 503. In that notice, EPA also presented the results of its studies to identify additional toxic pollutants that might be candidates for future sewage sludge regulations. EPA identified fifteen pollutants from a list of 803 pollutants for further evaluation and possible regulation. These 15 pollutants, listed below, had a Hazard Quotient (HQ) equal to or greater than one and thus failed the screening. The HQ is the ratio of the magnitude of exposure of the receptor organism (humans, aquatic organism) to the human health or ecological benchmark. EPA will obtain updated concentration data and conduct a refined risk assessment using the data to determine whether to propose amendments to Part 503.

- Acetone
- Anthracene
- Barium
- Beryllium
- Carbon disulfide
- Chloroaniline, 4-; p-Chloroaniline
- Diazinon
- Fluoranthene
- Manganese (from drinking water)
- Methyl ethyl ketone; 2-Butanone
- Nitrate (as Nitrate-nitrogen)
- Nitrite (as Nitrate-nitrogen)
- Phenol
- Pyrene
- Silver

The **Federal Register** notice (68 FR 75531, December 31, 2003) includes

timeframes for taking action on these pollutants. Once this action is taken, Appendix G of the Pretreatment regulation would be modified to add the additional pollutants if warranted. Additional biennial review cycles will occur per section 405(d)(2)(C) of the CWA.

EPA also determined that there was sufficient toxicological and exposure data for 25 pollutants to conclude that these pollutants would not require regulation under Part 503. (With respect to five of these 25 pollutants, EPA has reevaluated its determination because they are undergoing current IRIS (Integrated Risk Information System) or Office of Pesticide Program reassessment.) These 5 pollutants are listed below:

- Benzoic acid
- Butyl benzyl phthalate
- Dichloroethene, 1, 2-trans-
- Dichloromethane; Methylene chloride
- Dioxane, 1,4-

The remaining 20 pollutants, listed in Section III.A., have undergone EPA's rigorous exposure and hazard screening which includes a probabilistic model of 14 potential pathways to humans and ecological endpoints.

III. Solicitation of Comments

This section of the ANPRM describes the two issues EPA is soliciting comments on.

1. Whether EPA should propose to amend the list of pollutants eligible for removal credits to add the 20 pollutants for which the Agency has completed an exposure and hazard screening.

2. Whether there are any options to amend the "consistent removal" provision in the removal credits regulations that would be consistent with the earlier Third Circuit decision.

A. What Action Could EPA Take To Amend the List of Eligible Pollutants

EPA did not propose any changes to the list of pollutants eligible for removal credits or any modifications to the procedures for obtaining removal credits in the 1999 proposed Pretreatment Streamlining Rule (64 FR 39564). (EPA notes that the Agency did propose to change the methodology used for adjusting removal credits to account for system overflows in 40 CFR 403.7(h). See Section III.H. of today's final Pretreatment Streamlining Rule.) A number of commenters asked EPA to consider changes to the regulations to allow greater availability of removal credits for a broader range of pollutants. More specifically, these commenters suggested that EPA further streamline the regulations to make removal credits available for pollutants EPA is no longer considering for the sewage sludge regulations (40 CFR Part 503). EPA notes that certain pollutants that it evaluated and is no longer considering for the sewage sludge regulations are listed in Appendix G of the 40 CFR Part 403, Table II and are eligible for removal credits. Moreover, as explained above, EPA is at this time evaluating whether to amend the sewage sludge regulations. During any resulting rulemaking, interested parties may submit information and background data to EPA that would support amendments to Appendix G to add additional pollutants for which removal credits will be available.

In addition, a POTW or Industrial User may petition the Agency to establish a Part 503 standard or an amendment to Part 403, Appendix G for a pollutant. The petition must contain documentation consistent with the records of decision underlying current Appendix G listings. Data must be included on the toxicity, fate effects, and environmental transport properties of individual pollutants adequate to allow EPA to construct a Part 503 numerical standard, or to allow EPA to make a finding that the concentration of the pollutant in sewage sludge is not sufficient to create a reasonable probability of negative human health or environmental impact from that pollutant contained in the sewage sludge considering the specific sewage sludge use or disposal practice being employed by the POTW. See the **Federal Register** notice dated December 31, 2003 (68 FR 75531) for the exposure and hazard assessment needed for pollutant to be considered for removal credits.

As discussed in section II.C. of the preamble, there are 20 pollutants that did not fail EPA's exposure and hazard screening. These pollutants, listed below, could potentially qualify for removal credits.

- Acetophenone
- Azinphos methyl
- Biphenyl, 1,1-
- Chlorobenzene; Phenyl chloride
- Chlorobenzilate
- Chlorpyrifos
- Cresol, o-; 2-Methylphenol
- Endrin
- Ethyl p-nitrophenyl phenylphosphorothioate; EPN; Sanox
- Hexachlorocyclohexane, alpha-
- Hexachlorocyclohexane, beta-
- Isobutyl alcohol
- Methyl isobutyl ketone (MIBK); Methyl-2-pentanone, 4-
- Naled
- N-Nitrosdiphenylamine
- Trichlorofluoromethane
- Trichlorophenoxy propionic acid, 2-2,4,5-; Silvex
- Trichlororphenoxyacetic acid, 2,4,5-; 2,4,5-T
- Trifluralin
- Xylenes (mixture)

EPA could develop upper concentrations for these pollutants and add them to Appendix G of 40 CFR Part 403, Table II through an amendment to the Pretreatment rule. EPA requests comment on whether the addition of any of these 20 pollutants to Appendix G would be helpful to POTWs and IUs in applying for removal credits. Depending on the response, EPA would then consider whether to develop a schedule for proposing an amendment to Appendix G of 40 CFR Part 403, Table II.

B. Consistent Removal Demonstration

EPA did not propose any changes to how a POTW demonstrates "consistent removal" in the 1999 Proposed Pretreatment Streamlining Rule and did not receive comment on this issue. However, in a draft 2004 Report to Congress on the Costs and Benefits of Federal Regulation prepared by the Office of Management and Budget (OMB), OMB requested public nominations of specific regulations, guidance documents and paperwork requirements that, if reformed, could result in lower costs, greater effectiveness, enhanced competitiveness, more regulatory certainty and increased flexibility. These nominations, along with agency responses, were compiled in OMB's March, 2005 report on Regulatory Reform of the U.S. Manufacturing Sector. One of the reform nominations that OMB received suggested that the procedures POTWs must follow to get authority for removal credits are unduly burdensome and thus make removal credits unduly difficult to obtain. The commenter asserted that the required testing procedures do not accurately reflect the actual pollutant removal capability of the POTW and cited as example the requirement under 40 CFR 403.7(b) which requires that the POTW calculate the removal rate based on the average of the lowest half of the removal measurements taken according to listed procedures. The commenter recommended revisions to more accurately reflect the total removal by the POTW, and modifications to facilitate the granting of authority when justified.

With respect to the commenter's concern about "consistent removal", EPA notes that its options are constrained by the Third Circuit's

decision. However, EPA is requesting comment on whether there are any options to amend the consistent removal provision that would simplify or improve the process for obtaining removal credits that would be consistent with the restrictions previously established by the court.

Dated: September 27, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–20000 Filed 10–13–05; 8:45 am]

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Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

57483–57724 3
57725–57992 4
57993–58290 5
58291–58602 6
58603–58968 7
58969–59208 11
59209–59620 12
59621–59986 13
59987–60202 14

CFR PARTS AFFECTED DURING OCTOBER

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.

3 CFR

Proclamations:
7936 58281
7937 58283
7938 58285
7939 58287
7940 59209
7941 59977
7942 59979
7943 59981
7944 59983
7945 59985

Executive Orders:
11145 (Continued by 13385) 57989
11183 (Continued by 13385) 57989
11287 (Continued by 13385) 57989
12131 (Continued by 13385) 57989
12196 (Continued by 13385) 57989
12216 (Amended by 13385) 57989
12367 (Continued by 13385) 57989
12382 (Continued by 13385) 57989
12905 (Continued by 13385) 57989
12994 (Continued by 13385) 57989
13226 (Amended by 13385) 57989
13231 (Continued by 13385) 57989
13237 (Continued by 13385) 57989
13256 (Continued by 13385) 57989
13265 (Continued by 13385) 57989
13270 (Continued by 13385) 57989
13316 (Superseded in part by 13385) 57989
13231 (Amended by 13385) 57989
13283 (Revoked by 13385) 57989
13326 (Revoked by 13385) 57989
13328 (Revoked by 13385) 57989
13369 (Amended by 13386) 58289
13385 57989
13386 58289

5 CFR

1650 59621

6 CFR

13 59209

7 CFR

54 58969
62 58969
300 57993
301 57993
302 57993
305 57993
318 57993
319 57993
322 57993
330 57993
340 57993
351 57993
352 57993
353 57993
354 57993
355 57994
360 57993
371 57993
380 57993
915 59622
927 59625
979 57995
1005 59221
1007 59221
1902 59224
4279 57483
4287 57483

Proposed Rules:
301 ..... 58084, 59280
319 59283
1030 58086
1219 59678
1260 58095
1437 57520

9 CFR

77 58291
93 57486
327 57725

10 CFR

430 59122

12 CFR

34 59987
204 58603
225 59987
323 59987
564 59987
620 58293
621 58293
650 58293
651 58293
652 58293
653 58293
654 58293
655 58293
722 59987

1700.....59628
Proposed Rules:
307.....60015
331.....60019
362.....60019

13 CFR

126.....58974

14 CFR

21.....59932
25.....57726, 57728, 57730, 58605, 59630, 59632, 59635, 59988
39.....57487, 57491, 57493, 57732, 57734, 57736, 57739, 57740, 57998, 58000, 58002, 58005, 58007, 58257, 58293, 58295, 58298, 58300, 58303, 58305, 59229, 59231, 59233, 59236, 59237, 59240, 59243, 59244, 59246, 59252, 59256, 59258, 59263, 59266, 59636, 59638, 59640, 59644, 59647
71.....57497, 57498, 57746, 58307, 58308, 58607, 59651, 59652, 59653, 59990, 59992, 60132
73.....58607
95.....57499
97.....57504, 57746
119.....58796
121.....58796, 59932
135.....58796, 59932
145.....58796, 59932
183.....59932
Proposed Rules:
1.....58308
25.....58308
39.....57804, 58100, 58103, 58107, 58110, 58352, 58355, 58357, 58358, 58620, 58623, 58626, 58628, 58631, 58634
71.....57805
91.....58508
121.....58508, 58966, 58967
125.....58508
129.....58508
135.....58966, 58967

15 CFR

Proposed Rules:
7.....59678

16 CFR

Proposed Rules:
23.....57807
Ch. II.....60031

17 CFR

Proposed Rules:
1.....58985
145.....58985
147.....58985

18 CFR

Proposed Rules:
2.....58636
33.....58636

19 CFR

12.....58009
102.....58009
141.....58009
144.....58009
146.....58009
163.....58009

20 CFR

Proposed Rules:
404.....58999
416.....58999

21 CFR

1.....57505
20.....57505
310.....58974
341.....58974
510.....57927
866.....57748
Proposed Rules:
589.....58570

22 CFR

96.....59654

24 CFR

983.....59892

25 CFR

161.....58882

26 CFR

1.....57509, 57750, 60132
54.....59620
Proposed Rules:
1.....57523, 57807, 57930
301.....57523

27 CFR

9.....59993, 59996

29 CFR

697.....57722
1610.....57510
2560.....59620
2590.....59620
4022.....60002
4044.....60002
Proposed Rules:
1910.....59290
1926.....59290

30 CFR

Proposed Rules:
46.....57808
48.....57808
50.....57808
56.....57808
57.....57808
75.....57808
77.....57808
117.....57524

31 CFR

29.....60003

32 CFR

179.....58016

33 CFR

100.....58055
117.....58056, 58057, 58059, 58308, 59655
165.....58608, 60004
Proposed Rules:
165.....58646

36 CFR

1230.....58978

37 CFR

201.....58310
256.....58310
Proposed Rules:
201.....57526

39 CFR

Proposed Rules:
111.....60036

40 CFR

3.....59848
9.....59402, 59848, 60134
51.....59582, 59848
52.....57511, 57750, 58311, 58313, 58321, 58325, 58978, 59657, 60008, 60010
60.....59848
62.....57762, 57764, 58328
63.....57513, 59402, 59848
69.....59848
70.....59848
71.....59848
80.....58330
81.....59657
122.....60134
123.....59848
142.....59848
145.....59848
162.....59848
180.....59268
233.....59848
257.....59848
258.....59848
260.....59402
261.....57769
264.....59402
265.....59402
266.....59402
270.....59402
271.....59402, 59848
281.....59848
403.....59848, 60134
501.....59848
745.....59848
763.....59848
Proposed Rules:
51.....59680
52.....57531, 58112, 58119, 58138, 58146, 58154, 58167, 59681, 59688, 59690, 60036, 60037
62.....57531, 57811, 57812, 58361
63.....57534
69.....59690
81.....59690
302.....57813
355.....57813
372.....57822
403.....60199

41 CFR

60–1.....58946

42 CFR

405.....57785
412.....57785
413.....57785
415.....57785
419.....57785
422.....57785
431.....58260
457.....58260
483.....58834
485.....57785
Proposed Rules:
411.....59182
421.....58649
1001.....59015

43 CFR

3000.....58854
3100.....58854
3110.....58854
3120.....58854
3130.....58854
3140.....58610
3200.....58854
3470.....58854
3500.....58854
3600.....58854
3800.....58854
3830.....58854
3833.....58854
3835.....58854
3836.....58854
3860.....58854
3870.....58854
Proposed Rules:
4.....58167
2560.....58654

44 CFR

65.....57786, 57788
67.....57791
Proposed Rules:
67.....57848, 57850

45 CFR

Proposed Rules:
302.....60038
303.....60038
307.....60038

46 CFR

296.....59400

47 CFR

5.....59276
25.....59276
27.....58061
64.....59664
73.....59277, 59279
97.....59276
Proposed Rules:
64.....59704
73.....59292, 59293, 59294, 59295

48 CFR

204.....58980
215.....58980
252.....58980
App. F to Chapter 2.....58980

49 CFR

172.....59119
303.....58616
387.....58065
591.....57793
592.....57793
594.....57793
Proposed Rules:
29.....58175
192.....57536
393.....58657
571.....57549

50 CFR

17.....58335, 59808, 59952

222.....60013
223.....60013
622.....57802
648 .....57517, 57802, 58351
660.....58066, 59296
679 .....57518, 57803, 58983, 59675, 59676

Proposed Rules:

17 .....57851, 58361, 60051
21.....59710, 60052
622.....60058
635.....58177, 58366

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 OCTOBER 14, 2005

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies; published 9-14-05

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Generator interconnection agreements and procedures; standardization
Effective date delay; published 8-12-05

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan priorities list; published 9-14-05

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Individuals with hearing and speech disabilities; telecommunications relay and speech-to-speech services; published 9-14-05

FEDERAL DEPOSIT INSURANCE CORPORATION
Real estate appraisals; major disaster areas exceptions; published 10-14-05

FEDERAL RESERVE SYSTEM
Real estate appraisals; major disaster areas exceptions; published 10-14-05

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Minnesota; published 2-14-05
Virginia; published 9-16-05

NATIONAL CREDIT UNION ADMINISTRATION
Real estate appraisals; major disaster areas exceptions; published 10-14-05

SECURITIES AND EXCHANGE COMMISSION
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
Filer Manual; revisions; published 9-30-05

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 9-29-05
Boeing; published 9-9-05
Bombardier; published 9-9-05
Fokker; published 9-9-05
Goodrich; published 9-9-05
Hartzell Propeller Inc.; published 9-9-05

TREASURY DEPARTMENT
Comptroller of the Currency
Real estate appraisals; major disaster areas exceptions; published 10-14-05

TREASURY DEPARTMENT
Balanced Budget Act of 1997; implementation:
District of Columbia retirement plans; Federal benefit payments; published 10-14-05

TREASURY DEPARTMENT
Thrift Supervision Office
Real estate appraisals; major disaster areas exceptions; published 10-14-05

RULES GOING INTO EFFECT OCTOBER 15, 2005

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Florida; published 8-17-05

RULES GOING INTO EFFECT OCTOBER 16, 2005

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
California; published 10-5-05

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT
Assistance awards to U.S. non-Governmental organizations; marking requirements; Open for comments until further notice; published 8-26-05 [FR 05-16698]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]
Peanut promotion, research, and information order; amendment; comments due by 10-21-05; published 9-21-05 [FR 05-18759]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Cut flowers from countries with chrysanthemum white rust; comments due by 10-21-05; published 9-20-05 [FR 05-18604]
Viruses, serums, toxins, etc.:
Virus-Serum-Toxin Act; records and reports; requirements; withdrawn; comments due by 10-17-05; published 8-17-05 [FR 05-16266]

AGRICULTURE DEPARTMENT
Forest Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Southwestern Alaska coastal areas; subsistence management jurisdiction; comments due by 10-21-05; published 8-29-05 [FR 05-17080]
Wildlife regulations; subsistence taking; comments due by 10-21-05; published 8-11-05 [FR 05-15884]

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Reports and guidance documents; availability, etc.:
National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD
Meetings; Sunshine Act; Open for comments until further notice; published 10-4-05 [FR 05-20022]

COMMERCE DEPARTMENT
Economic Analysis Bureau
International services surveys:
BE-11; Annual survey of U.S. direct investment abroad; comments due by 10-21-05; published 8-22-05 [FR 05-16601]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic coastal fisheries cooperative management—
American lobster; comments due by 10-17-05; published 9-2-05 [FR 05-17557]
Atlantic highly migratory species—
Atlantic blue and white marlin, recreational landings limit; Atlantic tunas, swordfish, sharks, and billfish, fishery management plans; public hearings; comments due by 10-18-05; published 8-19-05 [FR 05-15965]
Magnuson-Stevens Act provisions—
National standard guidelines; comment extension; comments due by 10-21-05; published 8-15-05 [FR 05-16119]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT
Acquisition regulations:
Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

EDUCATION DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Vocational and adult education—
Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT
Meetings:

LIST OF PUBLIC LAWS

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H.R. 3863/P.L. 109–86

Natural Disaster Student Aid Fairness Act (Oct. 7, 2005; 119 Stat. 2056)

S. 1786/P.L. 109–87

To authorize the Secretary of Transportation to make emergency airport improvement project grants-in-aid under title 49, United States Code, for repairs and costs related to damage from Hurricanes Katrina and Rita. (Oct. 7, 2005; 119 Stat. 2059)

S. 1858/P.L. 109–88

Community Disaster Loan Act of 2005 (Oct. 7, 2005; 119 Stat. 2061)

Last List October 5, 2005

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109th Congress

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