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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9094]

RIN 1545–BC01

Return of Partnership Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that authorize the Commissioner to provide exceptions to the requirements of section 6031(a) of the Internal Revenue Code for certain partnerships by guidance published in the Internal Revenue Bulletin. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective November 5, 2003.

Applicability Date: For dates of applicability, see §§ 1.6031(a)–1(f)(2) and 1.6031(a)–1T(f)(2).

FOR FURTHER INFORMATION CONTACT: David A. Shulman, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A partnership may be used to create the economic equivalent of a variable-rate tax-exempt bond. The partnership acquires a tax-exempt obligation and issues both interests that are entitled to preferred returns based on current short-term yields on tax-exempt obligations (variable-rate interests) and interests that are entitled to the rest of the partnership's income (inverse interests). As a consequence of this structure, the partner that holds a variable-rate interest in the partnership receives a return that is equivalent to the return on a variable-rate tax-exempt bond. Under section 702(b), income received by a partnership generally retains its character when allocated to a partner.

Section 6031(a) requires every partnership to make a return for each taxable year stating specifically the items of its gross income and the deductions allowable by subtitle A of the Internal Revenue Code, as well as other specified information. Section 6031(b) requires every partnership that is required to file a return under section 6031(a) to provide each person who is a partner with such information as may be required by regulations. Section 1.6031(b)–1T(a)(3) provides that the partner must be provided such information as is required by any form or instructions that may be required. Generally, a Schedule K–1 (Form 1065) must be provided to each partner.

Section 404 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248; 96 Stat. 324, 669) (TEFRA) authorizes regulations that provide exceptions to the filing requirement of section 6031. Current § 1.6031(a)–1(a)(3) and (c) provides exceptions for partnerships that have no income, deductions, or credits for a taxable year and for eligible partnerships that elect to be excluded from the application of subchapter K in the manner specified by § 1.761–2(b)(2)(i) or are deemed to have so elected under § 1.761–2(b)(2)(ii).

The Treasury Department and the IRS believe that it is in the interest of sound and efficient administration of the tax laws to permit the Commissioner to provide in a timely and flexible manner for an additional exception to the requirements of section 6031(a) in situations in which all or substantially all of the partnership's income is derived from the holding or disposition of tax-exempt obligations or shares in a regulated investment company (as defined in section 851(a))(RIC) that pays exempt-interest dividends (as defined in section 852(b)(5)).

Explanation of Provisions

Under temporary regulations, the Commissioner may, in guidance published in the Internal Revenue Bulletin, provide an exception to the reporting requirements of section 6031(a) for partnerships in situations in which all or substantially all of the partnership's income is derived from the holding or disposition of tax-exempt obligations (as defined in section 1275(a)(3) and § 1.1275–1(e)) or shares in a RIC that pays exempt-interest dividends (as defined in section 852(b)(5)). The exception may be conditioned on substitute reporting and eligibility and other requirements. In conjunction with issuance of this temporary regulation, the Commissioner is publishing Rev. Proc. 2003–84, I.R.B. 2003–48, which provides for an exception to section 6031 for specified eligible partnerships.

Effective Date

These regulations are effective November 5, 2003.

Special Analyses

These temporary regulations are necessary to allow the publication of guidance in the Internal Revenue Bulletin to reduce the burden on certain partnerships. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3). It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Because no preceding notice of proposed rulemaking is required for this temporary regulation, the provisions of the Regulatory Flexibility Act do not apply. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding the following citation:

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

Section 1.6031(a)–1T also issued under section 404 of the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97–248; 96 Stat. 324, 669) (TEFRA). * * *

■ **Par. 2.** Section 1.6031(a)-1 is amended as follows:

■ 1. In paragraph (a)(1), the first sentence is amended by adding the language "and § 1.6031(a)–1T" immediately following the language "of this section".

■ 2. The text of paragraph (a)(3) is redesignated as paragraph (a)(3)(i).

■ 3. Paragraph (a)(3)(ii) is added.

■ 4. Paragraph (f) is revised.

The additions and revisions read as follows:

§ 1.6031(a)–1 Return of partnership income.

(a) * * *

(3) * * * (i) * * *

(ii) [Reserved]. For further guidance see § 1.6031(a)–1T(a)(3)(ii).

* * * * *

(f) *Effective dates.* This section applies to taxable years of a partnership beginning after December 31, 1999, except that'

(1) Paragraph (b)(3) of this section applies to taxable years of a foreign partnership beginning after December 31, 2000; and

(2) [Reserved]. For further guidance, see § 1.6031(a)–1T(f)(2).

■ **Par. 3.** Section 1.6031(a)–1T is added to read as follows:

§ 1.6031(a)–1T Return of partnership income (temporary).

(a) through (a)(3)(i) [Reserved]. For further guidance see § 1.6031(a)–1(a) through (a)(3)(i).

(ii) The Commissioner may, in guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(b) of this chapter), provide for an exception to partnership reporting under section 6031 and for conditions for the exception, if all or substantially all of a partnership's income is derived from the holding or disposition of tax-exempt obligations (as defined in section 1275(a)(3) and § 1.1275–1(e)) or shares in a regulated investment company (as defined in section 851(a)) that pays exempt-interest dividends (as defined in section 852(b)(5)).

(a)(4) through (f)(1) [Reserved]. For further guidance see § 1.6031(a)–1(a)(4) through (f)(1).

(f)(2) *Effective dates.* Paragraph (a)(3)(ii) of this section applies to taxable years of a partnership beginning on or after November 5, 2003. The applicability of paragraph (a)(3)(ii) of this section expires on or before November 6, 2006.

Dated: October 30, 2003.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–28190 Filed 11–5–03; 1:41 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9091]

RIN 1545–BC19

Special Depreciation Allowance; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to temporary regulations that were published in the **Federal Register** on Monday, September 8, 2003 (68 FR 52986), relating to the depreciation of property subject to section 168 of the Internal Revenue Code (MACRS property) and the depreciation of computer software subject to section 167.

DATES: These corrections are effective September 8, 2003.

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

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections are under sections 167, 168 and 1400L(b) of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of temporary regulations (TD 9091), that was the subject of FR Doc. 03–22670, is corrected as follows:

§ 1.167(a)–14T [Corrected]

■ 1. On page 52991, column 2, § 1.167(a)–14T(e)(3), last line of the paragraph, the language, "September 8, 2006" is corrected to read "September 4, 2006".

§ 1.168–1T [Corrected]

■ 2. On page 52991, column 3, § 1.168(d)–1T(d)(2), last line of the paragraph, the language, "September 8, 2006" is corrected to read "September 4, 2006".

■ 3. On page 53001, column 2, § 1.168(k)–1T(f)(5)(iii)(A), last line of the paragraph, the language, "minimum tax purposes" is corrected to read "minimum tax purposes (for example, use the remaining carryover basis as determined for alternative minimum tax purposes)."

■ 4. On page 53003, column 2, § 1.168(k)–1T(g)(1), last line of the paragraph, the language, "expires on September 8, 2006." is corrected to read "expires on September 4, 2006."

§ 1.169–3T [Corrected]

■ 5. On page 53004, column 3, § 1.169–3T, last line of the paragraph, the language, "September 8, 2003." is corrected to read "September 4, 2006."

§ 1.1400L(b)–1T [Corrected]

■ 6. On page 53006, column 2, § 1.1400L(b)–1T(g)(1), last line of the paragraph, the language, "expires on September 8, 2006." is corrected to read "expires on September 4, 2006."

Cynthia E. Grigsby,

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

[FR Doc. 03–28201 Filed 11–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 602

[TD 9092]

RIN 1545–BA44

Split-Dollar Life Insurance Arrangements; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Wednesday, September 17, 2003 (68 FR 54336), relating to the income,

employment, and gift taxation of split-dollar life insurance arrangements.

DATES: These corrections are effective September 17, 2003.

FOR FURTHER INFORMATION CONTACT: Rebecca Asta at (202) 622–3930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 61, 83, 301, and 7872 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9092) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 9092), that was the subject of FR Doc. 03–23596, is corrected as follows:

1. On page 54344, column 1, in the preamble, under the paragraph heading "Effective Date and Obsolescence of Prior Guidance", second paragraph, line 13, the language "arrangement does not fall with the" is corrected to read "arrangement does not fall within the".

2. On page 54344, column 2, in the preamble, the paragraph heading "Proposed Amendments to the Regulations" is corrected to read "Adoption of Amendments to the Regulations'.

§ 1.61–22 [Corrected]

■ 3. On page 54347, column 1, § 1.61–22(d)(3)(i), last line of the column, the language, "owner under paragraph (d)(1) for the" is corrected to read "owner under paragraph (d)(1) of this section for the".

■ 4. On page 54347, column 2, § 1.61–22(d)(4)(ii)(A), last line of the paragraph, the language, "right and;" is corrected to read "right; and".

■ 5. On page 54347, column 2, § 1.61–22(d)(5)(ii), line 2, the language, "owner and non-owner of the split-dollar" is corrected to read "owner and non-owner of the split-dollar life insurance".

■ 6. On page 54350, column 2, § 1.61–22(h), *Example 1.*, paragraph (ii), line 6, the language, "whether of R were designated as the policy" is corrected to read "whether R were designated as the policy".

■ 7. On page 54351, column 1, § 1.61–22(h), *Example 4.*, paragraph (ii), line 3, the language, "the arrangement during in each such year." is corrected to read "the arrangement in each such year."

Cynthia E. Grigsby,

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

[FR Doc. 03–28202 Filed 11–7–03; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 160

[USCG–2002–11865]

RIN 1625–AA41

Notification of Arrival in U.S. Ports; Correction

AGENCY: Coast Guard, DHS.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (FR Doc. 03–4408), which were published in the **Federal Register** of Friday, February 28, 2003, (68 FR 9537). The regulations related to the information reporting requirements for notification of vessel arrival in U.S. ports contained in 33 CFR part 160, subpart C.

DATES: Effective on November 10, 2003.

FOR FURTHER INFORMATION CONTACT: LTJG Kimberly B Andersen, U.S. Coast Guard (G–MPP), at 202–267–2562.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections superseded Subpart C of 33 CFR part 160 on April 1, 2003, and affect persons required to submit Notification of Arrival in U.S. ports.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and need to be clarified.

List of Subjects in 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous Material transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways

■ Accordingly, 33 CFR part 160 is corrected by making the following correcting amendments:

Subpart C—Notification of Arrival in U.S. Ports

■ 1. The authority citation for Part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation 0170.1. Subpart D is also issued under the authority of 33 U.S.C. 125 and 46 U.S.C. 3715.

§ 160.203 [Corrected]

2. In § 160.203(b)(1), immediately preceding the words "vessels entering any port or place in the" add the word "foreign."

§ 160.206 [Corrected]

■ 3. In § 160.206(d) immediately following the words "estimated arrival" add the words "and departure".

§ 160.210 [Corrected]

■ 4. In § 160.210(c) immediately preceding the words "vessels 300 or less gross tons operating in the Seventh Coast Guard District" add the word "foreign".

§ 160.212 [Corrected]

■ 5. In § 160.212, in the table to paragraph (a)(3), in entry (i), under the heading "You must submit an NOA—" remove the words "Before departure but at" and add in their place the word "At".

Dated: October 17, 2003.

L.L. Hereth,

Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–28189 Filed 11–7–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MI 82–02; FRL–7585–3]

Clean Air Act Final Approval of Operating Permit Program Revision; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve revisions to Michigan's title V air operating permit program, including revisions to Michigan Administrative Rule (R) 336.1216. R 336.1216(1)(b)(iv) no longer applies the permit shield provisions to certain administrative permit amendments. The EPA's final approval of this rule revision resolves the deficiency identified in EPA's Notice of Deficiency (NOD), published in the **Federal**

Register on December 11, 2001 (66 FR 64038). This final action also removes any resulting consequences, including sanctions, with respect to the December 11, 2001 NOD.

EFFECTIVE DATE: December 10, 2003.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final approval are available for inspection during normal business hours at the following location.

EPA Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. Please contact the person listed below to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604,(312) 886–2703, *valenziano.beth@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following:

I. What Is the History of Michigan's Title V Operating Permit Program?

As required under Subchapter V of the Clean Air Act (Act), EPA has promulgated regulations that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, or withdraw approval of state operating permit programs. These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V, generally known as title V, states and local permitting authorities developed, and submitted to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Michigan Department of Environmental Quality submitted Michigan's title V operating permit program for EPA approval on May 16, 1995, with supplements submitted on July 20, 1995, October 6, 1995, November 7, 1995, and January 8, 1996. The EPA granted interim approval of the Michigan title V program on January 10, 1997 (62 FR 1387), and the program became effective on February 10, 1997. Subsequently, based on the interim approval corrections that the State submitted on June 1, 2001 and September 20, 2001, EPA granted final full approval of the Michigan title V program, effective November 30, 2001. The EPA published the final full program approval in the **Federal Register** on December 4, 2001 (66 FR 62949).

Pursuant to its authority at 40 CFR 70.10(b), EPA published an NOD for Michigan's title V operating permit program on December 11, 2001 (66 FR 64038). The NOD was based upon EPA's finding that Michigan's regulation granting a permit shield for certain administrative permit amendments did not meet federal requirements for program approval. On May 7, 2003 and May 21, 2003, Michigan submitted to EPA a revision to its title V program correcting this program deficiency. Because Michigan's May 2003 submittals included revisions to R 336.1216 that the State had not yet finalized, EPA proposed approval of the draft State rule with final approval contingent upon Michigan promulgating and submitting a final rule identical in substance to the draft rule. The EPA's proposed approval of Michigan's title V operating permit program revisions was published on June 23, 2003 (68 FR 37110–37112). The EPA received no comments on the proposal. On August 18, 2003, Michigan submitted for EPA approval its final R 336.1216 and supporting documentation as a revision to Michigan's title V program. Michigan's final R 336.1216 is identical to the draft rule Michigan submitted to EPA on May 7, 2003.

II. What Is the Program Change That EPA Is Approving?

Michigan has revised its permit modification regulation, R 336.1216, to remove the permit shield provision for certain types of administrative permit amendments. Michigan's rule is now consistent with 40 CFR 70.7(d)(4), which does not allow a permit shield for the types of changes described below. The permit shield provisions at 40 CFR 70.6(f) offer enforcement protection in certain prescribed situations. Michigan's revised R 336.1216(1)(b)(iv) states: "The permit shield provided under R 336.1213(6) does not extend to administrative amendments made pursuant to subdivision (a)(i) to (iv) of this subrule." R 336.1216(1)(a) (i) through (iv) allows administrative amendments for the following types of changes: a change that corrects typographical errors; a change in the name, address or phone number of the responsible official or other contact person; a change that provides for more frequent monitoring and reporting; and a change in the ownership or operational control of a source where no other changes to the permit are necessary. These types of administrative permit amendments are the same as those specified in the federal rules at 40 CFR 70.7(d)(1) (i)–(iv). This rule revision resolves the deficiency identified in EPA's NOD, published in the **Federal Register** on December 11, 2001 (66 FR 64038).

In addition, R 336.1216 includes other minor changes to Michigan's permit modification rule, including changes to the citation method for Michigan laws, and a clarification to R 336.1216(1)(b)(iii) regarding the implementation of administrative permit amendment changes made pursuant to R 336.1216(1)(a) (i) through (iv). This clarification is consistent with 40 CFR 70.7(d)(3)(iii) and 70.7(e)(2)(v).

III. What Is Involved in This Final Action?

The EPA is approving revisions to the title V operating permit program submitted by the State of Michigan on May 7, 2003, May 21, 2003, and August 18, 2003. The program submittals include revisions to Michigan's operating permit modification rule, R 336.1216. These revisions meet the requirements of title V and 40 CFR part 70. R 336.1216(1)(b)(iv) is now consistent with 40 CFR 70.7(d)(4). Michigan's program revision satisfactorily addresses the program deficiency identified in EPA's NOD, published on December 11, 2001 (66 FR 64038). Pursuant to 40 CFR 70.10(b), EPA finds that Michigan is not subject to sanctions for the deficiency identified in the December 11, 2001 notice. Further, EPA is not obligated to promulgate a federal permit program for the December 11, 2001 NOD.

Consistent with EPA's final full approval of Michigan's title V program (66 FR 62951), this approval does not extend to Indian Country, as defined in 18 United States Code 1151.

IV. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866, "Regulatory Planning and Review" (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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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).

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 action 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 an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, 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, "Federalism" (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 Act.

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

This final approval 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 a significant regulatory action under executive order 12866.

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Governmental Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

Paperwork Reduction Act

This action 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. The 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).

Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 31, 2003.

Bharat Mathur,

Acting Regional Administrator, Region V.

■ 40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Appendix A to part 70 is amended by adding paragraph (a)(4) to the entry for Michigan to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Michigan

(a) * * *

(4) Department of Environmental Quality: Program revisions submitted on May 7, 2003, May 21, 2003, and August 18, 2003, including Michigan Administrative Rule 336.1216; submittals satisfactorily address EPA's Notice of Program Deficiency, published on December 11, 2001 (66 FR 64038). Final full approval of these revisions is effective December 10, 2003.

* * * * *

[FR Doc. 03–28213 Filed 11–7–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

RIN: 1660–AA17

Hazard Mitigation Grant Program; Correction

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

ACTION: Correcting amendment.

SUMMARY: FEMA announces a technical correction to 44 CFR 206.435 which was amended in the **Federal Register** on August 30, 1990, at 55 FR 35532 and again amended on February 26, 2002, at 67 FR 8844. This document corrects a reference made in § 206.435 to the old § 206.434 (b), now paragraph (c).

DATES: This document is effective November 10, 2003.

FOR FURTHER INFORMATION CONTACT: Margaret Lawless, Division Director, FEMA, 500 C Street, SW., Room 417, Washington, DC 20472; 202–646–3027.

SUPPLEMENTARY INFORMATION:

Background

FEMA announces a technical correction to 44 CFR 206.435. The final rule entitled Disaster Assistance; Hazard Mitigation Grant Program (Subpart N) was published on August 30, 1990, at 55 FR 35532. Changes to the rule at § 206.434 were subsequently published on February 26, 2002, at 67 FR 8844. These changes resulted in § 206.434 redesignating *Minimum project criteria* from paragraph (b) to (c). This correcting amendment changes a reference to the old paragraph (b), to paragraph (c) at § 206.435(b).

Need for Correction

As published, the final regulations contain an error which may prove misleading, and needs to be clarified.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Grant programs, Mitigation planning, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 206 is corrected by making the following correcting amendment:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

■ 1. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

■ 2. Revise the inductory text of paragraph (b) of § 206.435 to read as follows:

§ 206.435 Project identification and selection criteria.

* * * * *

(b) *Selection.* The State will establish procedures and priorities for the selection of mitigation measures. At a minimum, the criteria must be consistent with the criteria stated in § 206.434(c) and include:

* * * * *

Dated: October 31, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–28167 Filed 11–7–03; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 021113274–3267–02; I.D. 031501A]

RIN 0648–AO79

Atlantic Highly Migratory Species; Exempted Fishing Activities

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule in accordance with framework procedures for adjusting management measures of the Final Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), and Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish FMP). This final rule modifies existing regulations for Atlantic highly migratory species (HMS) exempted fishing activities, with the intent of improving monitoring and reporting of exempted fishing activities for Atlantic HMS, primarily those which are collected for public display purposes and those targeted for scientific research.

DATES: Effective December 10, 2003.

ADDRESSES: Written reports on fishing activities and applications for Exempted Fishing Permits and Scientific Research Permits should be submitted to Sari Kiraly or Heather Stirratt, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Sari Kiraly or Heather Stirratt at 301–713–2347, fax 301–713–1917, e-mail *Sari.Kiraly@noaa.gov* or *Heather.Stirratt@noaa.gov*.

SUPPLEMENTARY INFORMATION: Under 50 CFR 635.32, and consistent with 50 CFR 600.745, NMFS may authorize, for limited testing, public display, and scientific data collection purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an Exempted Fishing Permit (EFP) or a Scientific Research Permit (SRP) issued by NMFS in accordance with criteria and procedures specified in those sections. As necessary, an EFP or SRP would exempt the named party(ies) from otherwise applicable regulations under 50 CFR part 635. Such exemptions could address fishery closures, possession of prohibited species, commercial permitting requirements, and retention and minimum size limits.

This final rule was developed largely in response to ongoing concerns related to EFPs issued in the past for the purpose of collecting regulated HMS, particularly those collected for public display, and also takes into consideration concerns related to the reporting of permitted HMS scientific research activities. It is intended to strengthen the existing regulations which govern these permit related activities. This final rule is in accordance with framework procedures for adjusting management measures provided in the Final HMS FMP, and Amendment 1 to the Billfish FMP.

Exempted Fishing Operations

With respect to exempted fishing activities, NMFS finalizes the following requirements:

(1) Collectors of HMS for public display are required to notify the local NMFS Office for Law Enforcement at

least 24 hours prior to departing on a collection trip as to collection plans and location, and number of animals to be collected. This requirement is included so that the local NMFS Office for Law Enforcement can be aware of and monitor exempted collection activities within its jurisdiction. Additionally, this information can be made available by NMFS to state level enforcement agencies.

(2) Collectors of HMS for public display have the option of using conventional dart tags or microchip Passive Integrated Transponder (PIT) tags. Both types of tags will be supplied by NMFS. Unless PIT tags are specifically requested in the EFP application, conventional dart tags will be issued. Terms and conditions associated with the use of the tags issued will be specified in the EFP on a case-by-case basis.

(3) To minimize mortality of targeted animals as well as incidental bycatch potentially associated with the live capture of HMS, NMFS may specify permit conditions regarding fishing activities, such as gear deployment, monitoring, or soak time, if warranted, on a case-by-case basis.

(4) NMFS may select for at-sea observer coverage any vessel issued an EFP or SRP under this section. Selected vessels must comply with requirements specified under 50 CFR 635.7, 600.725, and 600.746. This requirement will be used to verify reports and monitor the takes of HMS and protected species resulting from fishing activities.

(5) This final rule also modifies EFP requirements for swordfish offloading. For the pelagic longline directed swordfish fishery, as vessel monitoring systems (VMS) are now required to be installed and operating on vessels, EFPs to allow delayed offloading after a closure are no longer required.

Reporting Requirements

To enhance data collection and reporting, NMFS finalizes the following reporting requirements:

(1) Applications for EFP and SRP renewals are required to include all reports specified in the applicant's previous permit, including the year-end report, all delinquent reports for permits issued in prior years, and all other specified information, in order for the renewal application to be considered complete. An EFP or SRP will not be issued for incomplete applications. This new requirement will reinforce the importance to NMFS of specified reports on the activities conducted under the permit.

(2) Fishing activities and disposition of all HMS either retained, discarded alive or dead, or tagged and released under an EFP or SRP must be reported within 5 days of the fishing activity, or as specified in the permit, without regard to whether the fishing activity occurs in or outside the Exclusive Economic Zone (EEZ). Dead discards will be counted against appropriate annual quotas. Also, an annual written summary report must be submitted to NMFS within 30 days after the expiration date of the permit. Reporting of such HMS fishing activity will provide important information as to the actual numbers of any animals that are removed from the stocks. If an individual issued a Federal EFP or SRP captures no HMS in any given month, either in or outside the EEZ, that individual must submit a "no-catch" report to NMFS within 5 days of the last day of that month.

(3) Several prohibitions are also added or modified to address: (a) submission of false information on permit applications or activity reports, and (b) violations of any of the terms and conditions of the EFP or SRP. These prohibitions are needed to facilitate enforcement of EFP and SRP application and reporting requirements. Essentially, they extend the permitting, record-keeping, and reporting requirements otherwise applicable to vessels and dealers to those persons issued EFPs and SRPs.

Comments and Responses

NMFS received a number of comments on the proposed rule during the comment period. In addition to the provisions contained in the proposed rule, comments were requested on several other potential regulatory provisions. Major comments received are summarized here together with responses.

Exempted Fishing Operations

Comment 1: The 72–hour pre-departure notification for collecting HMS may be problematic. NMFS should consider a more reasonable time frame of 24 - 48 hours.

Response: NMFS has modified the final rule to require a notification time of at least 24 hours. This time frame will still allow sufficient time for the local NMFS Office for Law Enforcement to respond and notify local officials as necessary.

Comment 2: Commenters generally disagreed with notification to the NMFS Office for Law Enforcement upon completion of a collection trip and 48 hours prior to shipping animals for display as being unreasonable. One commenter supported the provision.

Response: While notification upon completion of a trip and prior to shipping animals would serve to better track collection activities, NMFS has not included these provisions in the final rule because commenters objected on the grounds that: 1) it is unnecessary, since catch reports are submitted; and 2) such notification may be logistically difficult because transport times are not always predictable, as they are based on animal acclimation and health, transport staff, and equipment availability.

Comment 3: Commenters generally objected to the use of PIT tags on the grounds that there is insufficient information on the use of PIT tags in fishes, particularly sharks, and there are potential problems associated with their use. These commenters noted that given these uncertainties, a requirement at this time that PIT tags be used for HMS collected for display is not warranted. One commenter supported the use of PIT tags.

Response: The requirement to use PIT tags was included in the proposed rule in response to commercial collectors who objected to the use of the conventional dart tags because of their experience with infections and scarring in the animals and requested an alternative means of tagging. PIT tags were selected because aquariums and scientific researchers have used them to identify HMS. The final rule reflects the concerns associated with the use of PIT tags by not requiring collectors to use PIT tags, but by specifying that they may be used as an alternative to dart tags. NMFS will provide PIT tags upon request.

Comment 4: Commenters generally disagreed with the provision that would allow NMFS to specify fishing practices for collecting HMS for display in order to minimize mortalities. Specifically, commenters felt that NMFS should leave this determination to the collection professionals, as it is in their best interest to minimize or eliminate mortalities by using the most effective and efficient fishing gear and associated practices. One commenter supported the provision.

Response: It is in the best interest of collectors to minimize mortalities of the fish they collect. However, it is NMFS' responsibility to manage the HMS fisheries and minimize unnecessary mortalities of the target species and other species, such as sea turtles and seabirds, that may interact with fishing gear. Thus, the language in the final rule has been modified to more accurately reflect NMFS intent that NMFS may specify collection conditions in the permit as necessary.

Comment 5: Commenters generally disagreed with NMFS placing at-sea observers on board HMS collection vessels and suggested that NMFS should consider alternatives. Commenters noted that collecting operations are very specific and potentially hazardous, and that only experienced, trained personnel should be on board the vessels. Also, the vessels used are often small and crowded with no place for inexperienced newcomers who may jeopardize collecting operations. One commenter supported the provision to place observers on board collection vessels.

Response: At-sea observers are an important means for fishery managers to collect information on fishing activities that are generally considered too burdensome for fishermen to collect, either due to the specific details required or to potential interference with fishing operations. They also provide data that are used to verify other reporting requirements, allowing for more responsive management. In cases of overfished stocks, such as many HMS, or protected species such as sea turtles, observer data can be used to improve stock assessments. Observers are fully trained before being placed on board a vessel and should not interrupt fishing operations. Additionally, observers should be able to help the vessel captain and crew in releasing protected species. As specified in 50 CRF 635.7, 600.725, and 600.746, NMFS will not place an observer on a vessel that is deemed unsafe.

Reporting Requirements

Comment 6: The requirement that year-end reports be a mandatory component of a permit renewal package is appropriate.

Response: NMFS agrees and has retained this requirement in the final rule.

Comment 7: Commenters generally held that the reporting of dead discards and no-catch reporting is burdensome and not necessary. Because the intention is to collect and maintain live animals, the number of dead discards is very small and does not warrant the paperwork. Similarly, monthly no-catch reporting is questionable because collecting is not a year-round activity. Finally, the requirement to submit catch and no-catch reports within a 5–day time frame is impractical, and a more reasonable time frame should be considered. Conversely, one commenter supported the dead discard and no-catch reporting provisions.

Response: Through catch reports, NMFS will be better able to determine if many more animals are authorized for collection than actually are collected. These reporting requirements will allow for more accurate counting against the public display quota or relevant quotas recommended by the International Commission for the Conservation of Atlantic Tunas. Including dead discards in the counting will further enhance the accuracy of stock assessments and the monitoring of species subject to dead discard allowances. Similarly, NMFS will be able to better evaluate collection trends by confirming those times when no animals are collected. NMFS believes that a 5–day time frame for submitting reports is reasonable, as the report forms take only a few minutes to complete and can be mailed upon the vessel's return to shore. Therefore, the dead discard and no-catch reporting requirements, as well as the 5–day time frame for submitting reports, have been retained in the final rule.

Comment 8: Reporting collections in state waters should not be mandatory, as this further complicates an already complicated process. If NMFS wants data on state-permitted collections, the information should be obtained from the states. Also, NMFS should pursue the proposed Federal-state coordination process that has been discussed and which could resolve this issue.

Response: NMFS is in favor of developing a coordinated Federal-state permitting program. However, as the states have differing permit and reporting requirements, the most efficient interim solution is for federally permitted collectors to provide information on their collections regardless of where the fishing activity occurs. This will enable NMFS to assess better the total number of HMS being removed from the stocks.

Comment 9: Commenters support the prohibitions provisions regarding submission of false information and violations of the terms and conditions of the permit.

Response: NMFS retains these provisions in the final rule.

Request for Comments on Potential Regulatory Provisions

Comment 10: There was general agreement that EFP applicants should be required to demonstrate that holding facilities adequate for HMS animal husbandry are maintained. Commenters also suggested that existing accreditation organizations be involved in this process. However, some commenters noted that accreditation does take time, and NMFS should not preclude collection of animals while certification is pending

Response: NMFS is considering these types of regulations and may issue a proposed rule in the future.

Comment 11: Commenters generally held that denying EFPs for the collection of HMS that are difficult to maintain may be denying the development of technological advances in aquarium science and research. Additionally, commenters expressed concern regarding the data to be used to justify such restrictions. However, one commenter supported the proposal.

Response: NMFS agrees that there could be future technological advances in animal husbandry, and would not want to inhibit such advances. However, restricting the collection of certain animals may be necessary to avoid unwarranted mortality in stressed populations. NMFS will continue to consider this type of measure and may issue a proposed rule in the future.

Comment 12: Several commenters supported the issuance of EFPs only to display facilities in that this may eliminate commercial collectors collecting HMS in advance of actual purchases. Other commenters disagreed with this proposal, holding that independent commercial collectors should continue to be authorized to collect HMS, some companies having made significant contributions to improving the process.

Response: NMFS will continue to consider this approach and may issue a proposed rule in the future.

Comment 13: Commenters generally questioned the necessity or disagreed with the proposal regarding the issuance of a NMFS display permit in order to maintain HMS in captivity for display purposes. These commenters noted the existence of other regulatory entities and accreditation organizations which can adequately address the animal welfare concerns regarding public display facilities. Questions were raised as to the procedures and authority for such a display permit. One commenter supported the proposal, but expressed concern regarding how this would be implemented.

Response: NMFS will continue to consider this approach and may issue a proposed rule in the future.

Changes From the Proposed Rule

A number of changes to the regulations were made in response to comments received on the proposed rule:

(1) The proposed requirement that collectors of HMS for public display notify the local NMFS Office for Law Enforcement 72 hours prior to departing on a collection trip has been reduced to a minimum of 24 hours prior

notification. Also, the proposed requirements to notify the NMFS Office for Law Enforcement upon returning from a collection trip and 48 hours prior to shipping HMS to other locations have been eliminated.

(2) The proposed mandatory use of PIT tags in lieu of conventional dart tags for HMS collected for public display has been changed so that collectors will have the option of using either PIT tags or the conventional dart tags that NMFS currently issues. NMFS will supply PIT tags only upon request by EFP applicants, otherwise dart tags will be issued.

(3) The proposed provision that NMFS will specify permit conditions regarding HMS collection activities on a case-by-case-basis has been clarified to state that permit conditions may be specified by NMFS if warranted.

(4) The regulatory text has been reorganized to clarify the regulations and the requirements for SRPs versus EFPs. In addition, NMFS revised § 635.32 to simplify the text to state that the notification and reporting requirements apply to individuals with EFPs or SRPs regardless of where the fishing activity occurs.

Classification

This final rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*

For the purposes of NOAA Administrative Order (NAO) 216–6, the Assistant Administrator for Fisheries (AA) has determined that this action would not have a significant effect, individually or cumulatively, on the human environment, that it is consistent with the environmental impact statement for the FMP, and that it involves only minor technical additions, corrections or changes to the regulations. Accordingly, under sections 5.05 and 6.03a3(b) of NAO 216–6, this action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

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

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget Control Number.

This final rule contains a new collection-of-information requirement subject to review and approval by OMB under the PRA. The requirement for exempted fishing activity reporting has been cleared by OMB under Control Number 0648–0471. The public reporting burden for this collection of information is estimated to average 5 minutes per notification phone call at the beginning of a collection trip. The estimated time to prepare a catch report required by an EFP issued for display collection is 5 minutes, and to prepare a "no-catch" report the estimated time is 2 minutes. The estimated application preparation and year-end report preparation times for display EFPs are 30 minutes each. Application of a PIT or dart tag to a HMS collected for public display is estimated to take 2 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS (see **FOR FURTHER INFORMATION CONTACT**), and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel of Advocacy of the Small Business Administration that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. No comments were received on the economic impact of this rule. Accordingly, neither an initial regulatory flexibility analysis nor a final regulatory flexibility analysis was prepared for this final rule.

The AA has determined that this action will have no impacts on the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states/territories that have approved coastal zone management plans under the Coastal Zone Management Act. NMFS submitted requests for consistency determinations to affected states/territories with the proposed rule. Nine states/territories replied that the proposed action was consistent with their respective coastal zone management programs. Six states/territories did not respond within the allowed time frame; therefore, their concurrence is presumed.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing , Fishing Vessels, Foreign Relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: November 3, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.7, paragraph (a) is revised to read as follows:

§ 635.7 At-sea observer coverage.

(a) *Applicability.* NMFS may select for at-sea observer coverage any vessel that has an Atlantic HMS, tunas, shark or swordfish permit issued under § 635.4 or § 635.32. Vessels permitted in the HMS Charter/Headboat and Angling categories will be requested to take observers on a voluntary basis. When selected, vessels issued any other permit under § 635.4 or § 635.32 are required to take observers on a mandatory basis.

* * * * *

■ 3. In § 635.28, paragraph (c)(1)(i)(A) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5 N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a pelagic longline. However, North Atlantic swordfish legally taken prior to the effective date of the closure may be possessed in the Atlantic Ocean north of 5 N. lat. or landed in an Atlantic coastal state on a vessel with a pelagic longline on board, provided the harvesting vessel does no fishing after the closure in the Atlantic Ocean north of 5 N. lat., and reports positions with a vessel monitoring system, as specified in § 635.69. Additionally, legally taken swordfish from the South Atlantic swordfish stock may be possessed or landed north of 5 N. lat. provided the harvesting vessel does no fishing on that trip north of 5 N. lat., and reports positions with a vessel monitoring system as specified in § 635.69. NMFS may adjust the incidental catch retention limit by filing with the Office of the **Federal Register** for publication notification of the change at least 14

days before the effective date. Changes in the incidental catch limits will be based upon the length of the directed fishery closure and the estimated rate of catch by vessels fishing under the incidental catch quota.

* * * * *

■ 4. In § 635.32, paragraph (c)(1) is revised, paragraph (c)(4) is removed, and paragraphs (d) and (e) are added to read as follows:

§ 635.32 Specifically authorized activities.

* * * * *

(c) *Exempted fishing permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue exempted fishing permits.

* * * * *

(d) *Applications and renewals.* Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the **Federal Register** for publication notification on an annual or, as necessary, more frequent basis to report on previously authorized exempted fishing activities and to solicit public comment on anticipated exempted fishing requests. Applications for EFP and SRP renewals are required to include all reports specified in the applicant's previous EFP or SRP, including the year-end report, all delinquent reports for EFPs or SRPs issued in prior years, and all other specified information, in order for the renewal application to be considered complete. In situations of delinquent reports, renewal applications will be deemed incomplete and a permit will not be issued under this section.

(e) *Terms and conditions.* (1) Written reports on fishing activities and disposition of catch for all HMS either retained, discarded alive or dead, or tagged and released under a permit issued under this section, must be submitted to NMFS, at an address designated by NMFS, within 5 days of the fishing activity, without regard to whether the fishing activity occurs in or outside the Exclusive Economic Zone (EEZ). Also, an annual written summary report of all fishing activities and disposition of all fish captured under the permit must be submitted to NMFS, at an address designated by NMFS, within 30 days after the expiration date of the permit. NMFS will provide specific conditions and requirements as needed, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks, in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a "no-catch" report must be submitted to NMFS within 5 days of the last day of that month.

(2)(i) Collectors of HMS for public display must notify the local NMFS Office for Law Enforcement at least 24 hours, excluding weekends and holidays, prior to departing on a collection trip, regardless of whether the fishing activity will occur in or outside the EEZ, as to collection plans and location and the number of animals to be collected. In the event that a NMFS agent is not available, a message may be left.

(ii) All live HMS collected for public display are required to have either a conventional dart tag or a microchip Passive Integrated Transponder (PIT) tag applied by the collector at the time of the collection. Both types of tags will be supplied by NMFS. Conventional dart tags will be issued unless PIT tags are specifically requested in the permit application and their use approved by NMFS. Terms and conditions of the permit will address requirements associated with the use of the tags supplied on a case-by-case basis.

(3) Permit conditions regarding fishing activities, such as gear deployment, monitoring, or soak time, may be specified by NMFS if warranted, on a case-by-case basis.

(4) NMFS may select for at-sea observer coverage any vessel issued a permit under this section. Selected vessels must comply with the requirements for observer accommodation and safety specified at §§ 635.7, 600.725, and 600.746 of this chapter.

■ 5. In § 635.71, paragraphs (a)(6) and (a)(26) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in §§ 635.5 and 635.32 or in the terms and conditions of a permit issued under § 635.4 or an exempted fishing permit or scientific research permit issued under § 635.32.

* * * * *

(26) Violate the terms and conditions or any provision of a permit issued under § 635.4, or an exempted fishing permit or scientific research permit issued under § 635.32.

* * * * *

[FR Doc. 03–28209 Filed 11–7–03; 8:45 am]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 217
Monday, November 10, 2003

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115472–03]

RIN 1545–BC04

Return of Partnership Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of the **Federal Register**, the IRS is issuing temporary regulations that authorize the Commissioner to provide exceptions to the requirements of section 6031(a) of the Internal Revenue Code for certain partnerships by guidance published in the Internal Revenue Bulletin. The text of those temporary regulations also serves as the text of these proposed regulations. The regulations generally affect both certain partnerships that invest in tax-exempt obligations and partners in those partnerships.

DATES: Written or electronic comments must be received by February 9, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–115472–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–115472–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS Internet site at *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David A. Shulman, (202) 622–3070 (not a toll-free number); concerning the submissions of comments or the request for a public hearing, Guy Traynor, (202) 622–3693 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published elsewhere in this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 6031(a). The temporary regulations authorize the Commissioner to provide, in guidance published in the Internal Revenue Bulletin, exceptions to the requirements of section 6031(a) if all or substantially all of the partnership's income is derived from the holding or disposition of tax-exempt obligations (as defined in section 1275(a)(3) and § 1.1275–1(e)) or shares in a regulated investment company (as defined in section 851(a)) that pays exempt-interest dividends (as defined in section 852(b)(5)). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Proposed Effective Date

These regulations are proposed to apply November 5, 2003.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that relatively few partnerships have income that is primarily from tax-exempt obligations. Furthermore, the purpose of this regulation is to decrease (rather than increase) the number of entities required to file a partnership return. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for "Section 1.6031(a)–1" to read in part as follows:

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

Section 1.6031(a)–1 is also issued under section 404 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248; 96 Stat. 324, 669) (TEFRA), and 26 U.S.C. 6031. * * *

Par. 2. Section 1.6031(a)–1 is amended as follows:

1. Paragraph (a)(3)(ii) is revised.
2. Paragraph (f) is revised.

The revisions read as follows:

§ 1.6031(a)–1 Return of partnership income.

(a) * * *

(3) * * *

(i) * * *

(ii) [The text of the proposed amendment to § 1.6031(a)–1 (a)(3)(ii) is the same as the text of § 1.6031(a)–1T (a)(3)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) * * *

(1) * * *

(2) [The text of the proposed amendment to § 1.6031(a)–1(f)(2) is the same as the text of § 1.6031(a)–1T (f)(2) published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–28191 Filed 11–5–03; 1:41 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209817–96]

RIN 1545–AU19

Treatment of Obligation-Shifting Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a proposed regulation relating to the treatment of certain multiple-party financing transactions in which one party realizes income from leases or other similar agreements and another party claims deductions related to that income.

FOR FURTHER INFORMATION CONTACT: Pamela Lew, (202) 622–3950, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

In Notice 95–53 (1995–2 C.B. 334) (modified and superseded by Notice 2003–55) (2003–34 I.R.B. 395), the IRS and Treasury Department stated that regulations under section 7701(l) would be issued to recharacterize lease strips to prevent tax avoidance. On December 27, 1996, a notice of proposed rulemaking (REG–209817–96) relating to the treatment of certain obligation-shifting transactions was published in the **Federal Register** (61 FR 68175). An obligation-shifting transaction is a transaction in which the transferee (the assuming party) assumes obligations or acquires property subject to obligations under an existing lease or similar agreement and the transferor (the property provider) or any other party has already received or retains the right to receive amounts that are allocable to periods after the transfer.

The proposed regulations recharacterize obligation-shifting transactions in a manner intended to reflect the economic substance of the transactions and to clearly reflect the income of the parties to the transaction. Under the recharacterization, the property provider and the assuming party must report the income from the underlying property allocable to their respective periods of ownership. This result is achieved by imputing a series of transactions to both the assuming party and the property provider that results in a rent-leveling process based on the constant rental accrual method described in § 1.467–3(d). The assuming party is required to recognize rental income for the period in which it owns the property or leasehold interest. The property provider must adjust its income for any differences between amounts it recognized and amounts it would have recognized if it had reported income on a level-rent basis for the periods that it owned the property or leasehold interest. To account for the difference between rental income the assuming party is required to recognize and rental income the assuming party actually receives, the proposed regulations treat the assuming party as issuing an interest-bearing note to the property provider as additional consideration for the obligation-shifting transaction. Both parties must account for the resulting interest income and expense appropriately. To account for any differences in timing or amount between payments the property provider actually receives after the transaction and payments treated as being made to the property provider under the note from the assuming party, the property provider is treated as an obligor or obligee under a second loan, for which the property provider must account accordingly.

After careful consideration, the IRS and Treasury Department have concluded that the complexity presented by these proposed regulations is not necessary to prevent tax avoidance in these transactions. Since the publication of the proposed regulations, the Court of Appeals for the District of Columbia Circuit has held that the partnership used in a lease strip was not a valid partnership because the participants did not join together for a non-tax business purpose. *Andantech L.L.C.* v. *Commissioner*, Nos. 02–1213; 02–1215, (D.C. Cir. June 17, 2003), 2003 U.S. App. LEXIS 11908, *aff'g in part and remanding for reconsideration of other issues* T.C. Memo 2002–97 (2002). Also, in *Nicole Rose* v. *Commissioner*, 320 F.3d 282 (2d Cir. 2002) *aff'g per curiam* 117 T.C. 328 (2001), the United States Court of Appeals for the Second Circuit upheld the Tax Court's determination that a lease transfer did not have economic substance.

In the opinion of the IRS and Treasury Department, the claimed tax treatment for lease strips improperly separates income from related deductions, and lease strips do not produce the tax consequences desired by the participants. *See* Notice 2003–55 (2003–34 I.R.B. 395).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–209817–96) that was published in the **Federal Register** on December 27, 1996 (61 FR 68175) is withdrawn.

Dale F. Hart,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–28203 Filed 11–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–162625–02]

RIN 1545–BB73

Real Estate Mortgage Investment Conduits; Application of Section 446 With Respect to Inducement Fees; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the proper timing and source of income from fees received to induce the acquisition of noneconomic residual interests in Real Estate Mortgage Investment Conduits (REMICs).

DATES: The public hearing originally scheduled for Tuesday, November 18, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of

public hearing that appeared in the **Federal Register** on Monday, July 21, 2003, (68 FR 43055), announced that a public hearing was scheduled for Tuesday, November 18, 2003, at 10 a.m. in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 446, 860, and 863 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Monday, October 20, 2003. Outlines of oral comments were due on Tuesday, October 28, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, November 5, 2003, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, November 18, 2003, is cancelled.

Cynthia E. Grigsby,

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

[FR Doc. 03–28204 Filed 11–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7441]

Proposed Flood Elevation Determinations

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the below table.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E. Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, *§ 67.4.*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet •(NVAD)		Communities affected
		Effective	Modified	
Sioux County, and Incorporated Areas				
Cannonball River	Approximately 4,300 feet downstream of Rice Street	None	•1,658	Standing Rock Indian Reservation, ND and City of Solen
	Approximately 7,700 feet upstream of Rice Street	None	•1,668	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet •(NVAD)		Communities affected
		Effective	Modified	
Grand River (at Bullhead)	Approximately 4,000 feet downstream of confluence of Rock Creek.	None	•1,759	Standing Rock Indian Reservation, SD
	Approximately 4,600 feet upstream of confluence of Stink Creek.	None	•1,774	
Grand River (at Little Eagle)	Approximately 3.4 miles downstream of the State Route 63.	None	•1,638	Standing Rock Indian Reservation, SD
	Approximately 2,000 feet upstream of Old Irrigation Dam	None	•1,651	
Oak Creek	Approximately 7,500 feet downstream of Sewage Lagoons.	None	•1,622	Standing Rock Indian Reservation, SD
	Approximately 2,900 feet upstream of Old Irrigation Dam	None	•1,646	
Rock Creek	At confluence with Grand River (at Bullhead)	None	•1,761	Standing Rock Indian Reservation, SD
	Approximately 7,500 feet upstream of Bullhead Road	None	•1,793	

Depth in feet above ground
* National Geodetic Datum
• National American Vertical Datum

Addresses:

Standing Rock Indian Reservation, ND & SD:
Maps are available for inspection at the Department of Tribal Land Management, South River Road, Fort Yates, North Dakota 58538.
Send comments to the Honorable Charles Murphy, Chairman, Standing Rock Sioux Tribe, P.O. Box D, Fort Yates, North Dakota 58538.
City of Solen:
Maps are available for inspection at the Engineering Department, 306 Leach Street, Solen, North Dakota 58570.
Send comments to the Honorable Larry Froelich, Mayor, City of Solen, P.O. Box 117, Solen, North Dakota 58570.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
South Dakota	Hill (City), Pennington County.	Spring Creek	Approximately 1.2 miles upstream of U.S. Highway 16/385.	None	*4,934
			Approximately 1.3 miles upstream of U.S. Highway 16/385.	*4,937	*4,937

Depth in feet above ground
* Elevation in feet
Maps are available for inspection at City Hall, 324 Main Street, Hill City, South Dakota 57745.
Send comments to The Honorable Peter J. Stach, Mayor, City of Hill City, P.O. Box 395, Hill city, South Dakota 57745.

South Dakota	Pennington County	Spring Creek (downstream of corporate limit of City of Hill City).	At Calumet Road	None	*4,640
			Approximately 1.2 miles upstream of U.S. Highway 16/385.	None	*4,934
		Spring Creek (upstream of corporate limit of City of Hill City).	Approximately 400 feet upstream of the Burlington Northern Railroad.	*5,010	*5,014
			Approximately 1 mile upstream of U.S. Highway 16/385.	None	*5,309

Depth in feet above ground
* Elevation in feet
Maps are available for inspection at the County Courthouse, 315 Saint Joseph Street, Rapid City, South Dakota 57701.
Send comments to The Honorable Kenneth Davis, Chairperson, Pennington County Board of Commissioners, 315 Saint Joseph Street, Rapid City, South Dakota 57701.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 4, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–28168 Filed 11–7–03; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 031028268–3268–01; I.D. 091603F]

RIN 0648–AR12

Atlantic Highly Migratory Species; Bluefin Tuna Season and Size Limit Adjustments

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend regulations under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) governing the Atlantic bluefin tuna (BFT) fishery regarding the opening date of the Purse seine category, closure dates of the Harpoon and General categories, and size tolerances of large medium BFT for the Purse seine and Harpoon categories. The intent of this proposed rule is to further achieve domestic management objectives under the HMS FMP and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before November 28, 2003. The public hearing dates are:

1. November 24, 2003, 7 p.m.–9 p.m., Atlantic Beach, NC.

2. November 25, 2003, 7 p.m.–9 p.m., Gloucester, MA.

ADDRESSES: Written comments on the proposed rule should be sent to Dianne Stephan, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr. Gloucester, MA 01930. Comments also may be sent via facsimile (fax) to (978) 281–9340. Comments will not be accepted if submitted via e-mail or the Internet.

The public hearing locations are:

1. Sheraton Atlantic Beach Oceanfront Hotel, 2717 W. Fort Macon Road, Atlantic Beach, NC 28512.

2. Sawyer Free Library, 2 Dale Avenue, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Dianne Stephan at (978) 281–9397.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background

On May 28, 1999, NMFS published in the FEDERAL REGISTER (64 FR 29090) final regulations, effective July 1, 1999, implementing the HMS FMP that was adopted and made available to the public in April 1999. This action proposes to amend the current HMS regulations regarding quota category opening and closure dates for the Purse seine, Harpoon and General categories and size tolerances for large medium BFT, measuring 73 to less than 81 inches (185 to less than 206 cm), in the Harpoon and Purse seine categories. NMFS issues this proposed rule to solicit public comment on the merits and potential impacts of these changes to the HMS regulations, which are intended to further the objectives of the HMS FMP. After consideration of public comment, NMFS will publish a final rule in the **Federal Register**.

Several additional issues regarding the domestic management of BFT were discussed at length during the most recent HMS Advisory Panel (AP) meeting held in Silver Spring, MD, many of which are beyond the scope of this action and will be addressed through a future HMS FMP amendment. These issues may include, but are not limited to, adjustment of domestic BFT quota allocation percentages, adjustment of General category time-period subquotas, and addressing the BFT quota allocation aspects of the Petition for Rulemaking (Petition) submitted by the North Carolina Department of Marine Fisheries (see Notice of Receipt of Petition, 67 FR 69502, November 18, 2002). Because these issues require further analysis and public input, NMFS has announced its intent to address these additional issues through an HMS FMP amendment (68 FR 40907, July 9, 2003).

Adjustment of the Purse Seine Category Start Date

The Purse seine category start date was originally designed to minimize potential gear conflicts between the purse seine fishery and the handgear fishery for BFT. During the early 1970's, the opening of the purse seine BFT season was determined by the Regional Director and fluctuated between September 1 and the day after Labor Day. Since the late 1970's, August 15 has been the official start date for the Purse seine category BFT fishery (44 FR 36049, June 20, 1979), while June 1 has been the start date of the handgear fisheries (i.e., General and Harpoon categories). August 15 was determined as an appropriate start date for the Purse seine category as the majority of BFT handgear landings took place early in the season (i.e., July through early August). However, over the past several years there has been a shift in the commercial handgear landings to the fall months, which results in a large portion of General category BFT being landed simultaneously with Purse seine category landings. This can potentially re-create the gear conflicts originally intended to be avoided by the August 15 Purse seine start date as well as cause market gluts of BFT being exported from the United States, thus depressing ex-vessel prices and revenues ($13,948,190 and $3,066,034, respectively for 2002) in these two categories.

Thus, NMFS proposes to adjust the start date of the Purse seine category BFT fishery to commence on July 15 of each fishing year. This proposed action would be consistent with the original intent behind the creation of the Purse seine category start date to minimize conflicts with other gear types and permit categories, as well as maximize economic yields from General and Purse seine category landings (i.e., avoid market gluts). This proposed action should have a positive economic impact to the BFT fishery as a whole, although the Harpoon category may experience a minor negative economic impact. This proposed action is not expected to have substantial ecological impacts because there would be no changes to the current mortality level of BFT or of any non-target species.

Establishment of a Harpoon Category End Date

On June 13, 1980, NMFS established the Harpoon category (45 FR 40118) with the intent to create a quota category in which harpoons were the only permissible gear type in order to

preserve a historical fishery that takes place in northern New England (i.e., Gulf of Maine). Until recently, all Harpoon category landings have occurred in traditional locations in New England prior to BFT migrating out of the Gulf of Maine. However, in recent years, the Harpoon category quota has not been fully harvested in New England, which has led to vessels in other geographic regions landing 1,043 pounds of BFT against the Harpoon category quota in 2002. This has raised several concerns including conflict with the original intent of the regulations for this fishery to be in the New England area, as well as administrative issues regarding potential mis-reporting and enforcement concerns regarding illegal activities. Over the last couple of years, the Harpoon category has remained open with quota available after the General category quota has been met. This has led some vessels that use rod and reel gear to obtain a Harpoon category permit and land BFT caught with rod and reel against the Harpoon category quota. Typically, these concerns have not been raised as the Harpoon category quota is harvested prior to BFT moving out of the New England area, thus there has been no reason to implement a Harpoon category season end date.

NMFS proposes to establish a Harpoon category season end date of November 15, which is near the time period when BFT migrate out of the New England area, for each fishing year regardless of whether the quota is harvested. The intent of this proposed action is to preserve the traditional Harpoon category fishery by restricting its geographic activity to the New England area and minimize any negative impacts by proposing action before an investment in a southern area Harpoon category fishery takes place. Any potential negative impacts to the northern area fishermen from a closure date and prior to attaining the entire quota maybe somewhat mitigated by an adjustment to the tolerance limit for large medium BFT, as discussed below.

The impacts associated with this proposed action should be negligible due to the lack of investment in outfitting vessels to participate in the Harpoon category and the limited number of BFT Harpoon landings that have occurred outside the traditional New England area in recent history. Since there had been no Harpoon category participation outside the New England area prior to 2002, there has been minimal investment in a true Harpoon category fishery. Finally, any minor potential negative impacts to vessel owners/operators that wish to fish outside the traditional New England area and use a harpoon as a primary gear type may be mitigated because they would still be able to do so with a General category permit under General category retention limits and regulations.

Adjustment of General Category Closure Date

During the development of the HMS FMP, the emergence of a General category BFT fishery in the southern Atlantic region was extensively discussed by the HMS AP and the public. However, the HMS AP did not reach consensus on how the HMS FMP should address the scope of a southern area General category BFT fishery. Over the last couple of years, NMFS has performed a number of inseason quota transfers of BFT, consistent with the transfer criteria established in the HMS FMP, which have allowed the General category BFT fishery to extend into the winter months (i.e., late November - December). In 2002, NMFS received the Petition to formalize this winter fishery and extend fishing opportunities for the General category into January. NMFS published a Notice of Receipt of Petition on November 18, 2002 (67 FR 69502).

In part, to address some of the concerns raised in the Petition, as well as to increase fishing opportunities and optimum yield for the fishery overall, NMFS proposes to extend the General category end date from December 31 to January 31. This would effectively alter the third time-period from October through December to October through January. The quota allocated to this time-period would remain 10 percent of the overall General category quota (minus the 10 mt New York Bight Set-aside).

This action could have negative economic impacts on those northern area fishermen who would have otherwise caught and sold fish earlier in the season, but would have positive economic impacts to southern area fishermen who would be able to fish later in the season. Negative impacts could be slightly mitigated if northern area fishermen are willing to travel south late in the season, provided there is reciprocity among the different state permitting regulations.

Adjustment of the BFT Size Tolerance Limits for the Purse Seine Category

Currently, vessels permitted in the Purse seine category may retain, possess, land, and sell large medium BFT in amounts not exceeding 15 percent, by weight, of the giant BFT landed on a particular trip, provided that the total amount of large medium BFT landed does not exceed 10 percent, by weight, of the total BFT quota allocated to that vessel for that fishing year. This restriction is intended to focus the fishery on BFT that have likely spawned at least once, and provide some protection to the large medium BFT size class, which is generally considered to represent pre-spawning fish imminently available to contribute to recruitment in the western Atlantic BFT stock.

Over the last few years, the Purse seine category has not fully harvested its allocated quota. This can be attributed to a number of different reasons outside of the industry's or NMFS' control. In 2001, Purse seine category landings were steady until the September 11 terrorist attack. After September 11, spotter planes were unable to assist in locating schools of BFT for Purse seine category vessels due to a requirement by the Federal Aviation Administration to have all flights schedule a predetermined flight pattern prior to take-off. In 2002, Purse seine category vessels claimed there were large numbers of mixed schools of BFT, comprised of different size classes, and that it was difficult to locate schools consisting solely of giant BFT. Purse seine category vessels claimed they therefore did not set on these mixed schools to ensure they stayed within the regulations tolerance limits and to avoid the potential of increasing BFT dead discards. However as a result, they were not able to land the allocated quota. In 2003, a similar scenario to 2002 is occurring, although this year there also appears to be fewer giant BFT available in any school.

To address some of the concerns raised by the Purse seine category participants and to provide a balance between dead discard reduction and increased numbers of pre-spawning BFT landed, NMFS proposes to remove the large medium tolerance limit on a trip basis and increase the seasonal large medium BFT tolerance to 15 percent by weight of the total BFT quota allocated to that vessel. This proposed action is designed to maintain the focus of the fishery on BFT that have likely spawned at least once while still providing Purse seine category vessels opportunities to harvest their allocated BFT quota in its designated time frame, thus increasing optimum yield. NMFS currently has very little data on BFT discards associated with this segment of the BFT fishery and therefore proposes to implement a previously approved vessel logbook program to gather more data on this issue, particularly regarding impacts of Purse seine category activities on discards of undersized

BFT. In the future, if circumstances and/or the data warrant, observers may also be deployed as well.

Adjustment of the BFT Size Tolerance Limits for the Harpoon Category

In 1992, NMFS implemented a tolerance limit on the large medium BFT size class for the Harpoon category (57 FR 32905, July 24, 1992) and restricted vessels permitted in the Harpoon category to one large medium BFT per vessel per day. These vessels may land an unlimited number of giant BFT, so long as the Harpoon category quota is not exceeded. This action was taken to reduce the fishing mortality on large medium BFT, thus allowing for an increase in the spawning potential of the western Atlantic BFT stock, while allowing for the incidental take of large medium BFT to minimize regulatory discards and negative economic impacts. Over the last couple of years, however, the Harpoon category has not been fully harvested, which can be attributed to a number of reasons such as oceanographic conditions, weather patterns, and migratory patterns, all of which appear to have reduced the availability of giant BFT. Also, similar to members of the Purse seine category, operators of Harpoon category vessels claim large numbers of mixed schools of BFT are comprised of different size classes, and that it has been difficult to locate schools of giant BFT on the fishing grounds. Having the ability to visually determine the size class of BFT prior to throwing a harpoon is a vital characteristic of this fishing method which will to minimize mortality on undersized BFT and reduce dead discards.

This proposed action is intended to provide Harpoon category vessels a reasonable opportunity to harvest the allocated Harpoon category quota in its designated time frame by allowing vessels permitted in the Harpoon category to retain two large medium BFT per vessel per day. Again, NMFS currently has very little data on BFT discards associated with this segment of the BFT fishery and may implement a previously approved vessel logbook program in the future to assist in determining the impact of the regulations and tolerance limits on discards in this fishery.

The potential impacts associated with this proposed action could consist of positive economic impacts by providing Harpoon category vessels more opportunities to harvest their allocated BFT quota in its designated time frame, thus increasing optimum yield. In addition, the proposed action is expected to have positive economic and biological impacts by facilitating Harpoon category vessels to retain, land, and sell more large medium BFT that would otherwise be discarded while maintaining the focus of the fishery on BFT that have likely spawned at least once.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The AA has preliminarily determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries.

NMFS has prepared a regulatory impact review and an Initial Regulatory Flexibility Analysis (IRFA) that examine the impacts of the alternatives for adjusting the Purse seine category start date, establishing a Harpoon category end date, adjusting the General category end date, and adjusting the retention limit for large medium BFT in the Harpoon and Purse seine category fisheries on small entities. The purpose of this proposed action is to ensure the BFT fishery is managed consistently with the objectives of the HMS FMP and its implementing regulations, applicable statutes including the Magnuson-Stevens Act and ATCA, and the 1998 ICCAT Rebuilding Plan for western Atlantic BFT.

The analysis for the IRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. Specifically, these issues affect vessels in three permit categories, namely the Purse seine, Harpoon, and General categories. The gross revenues for 2002, and number of vessels to date for 2003 for each category are as follows: General category, $13.9 million, 6,797 vessels; Purse Seine category, $3.0 million, 5 vessels; and the Harpoon category, $0.5 million, 59 vessels.

Three alternatives were analyzed for the adjustment of the Purse seine category start date, including the status quo/no action alternative of an August 15 start date, the preferred alternative of a July 15 start date, and the same start date as all other categories - June 1. These alternatives were evaluated to improve optimum yield and ex-vessel prices for the Purse seine and General categories while minimizing negative impacts to other commercial categories, specifically the Harpoon category. Because of the various factors that affect ex-vessel prices for BFT (i.e., supply, quality, etc.), the exact effect of different Purse seine category season start dates on ex-vessel prices is uncertain. NMFS estimated these impacts by assuming that the amount of product on the market was the primary factor affecting ex-vessel prices. Under the no action alternative, both the General and Purse seine categories appear to be negatively affected by depressed ex-vessel prices which may result from a mid-season glut of BFT on the market. However, under this alternative the Harpoon category benefits with higher ex-vessel prices early in the season before the Purse seine category commences. Opening the Purse seine category on June 1 could shift Purse seine category landings to earlier in the year and result in positive impacts for the Purse seine and General categories by relieving the mid-season market glut and distributing landings more uniformly over the fishing year. However, the Harpoon category could suffer the most negative impacts under this alternative because of the overall net increase in early season landings resulting from the overlap with the Purse seine category fishery season. This overlap would occur during the time period when the Harpoon category traditionally experiences the best ex-vessel prices and on average annually lands the bulk (87%) of its product. The preferred alternative of a July 15 start date appears to minimize the negative impacts on the Harpoon category by reducing the amount of overlap with the Purse seine category season relative to Alternative three, while still reducing the mid-season market glut, which should positively impact Purse Seine and General category ex-vessel prices. Increase in overlap with the Harpoon category during the time period when the Harpoon category averages approximately 26 percent of its gross revenues annually would be reduced to 30 days. Due to the large amount of landings, gross revenues and numbers of participants attributed to the Purse seine and General category commercial BFT sectors, this alternative is expected to provide the greatest positive impacts to the BFT fishery as a whole, even though the smaller Harpoon category may experience slightly negative economic impacts. In addition, it should be noted that any negative impact to the Harpoon category from the preferred alternative could be partially mitigated by the preferred alternative for Issue 2, which would increase the tolerance limit for large medium BFT to two fish per day, in an effort to improve the ability of the Harpoon category to catch its annual quota.

Three alternatives were also considered for the Harpoon category end date. The status quo alternative

would maintain an open Harpoon category season year round, provided there is Harpoon category quota available. Alternative two would close the Harpoon category season on November 15, and alternative three would establish a flexible season end date based on the actual dates of the BFT Fall migration. Alternatives two and three were designed to maintain the Harpoon category quota for the traditional New England fishery and impact only the Harpoon category vessels. The status quo alternative is expected to result in negative impacts for the traditional northern Harpoon category fishery since BFT could be harvested under the Harpoon category quota in areas outside the New England area. In addition, the status quo may encourage the development of, and investment in, a southern area Harpoon category fishery, which has not yet occurred. The second, and preferred alternative, is expected to provide positive impacts for the traditional New England Harpoon category fishery since it would close the fishery near the time period when BFT would migrate out of the New England area. Negative impacts to southern area fishermen interested in participating in the Harpoon category fishery under alternatives two and three are expected to be negligible since there had been no BFT landings against the Harpoon category quota prior to 2002, few vessels have participated in the Harpoon category fishery in the south Atlantic since that time, and there has been little investment in gear and equipment in a Harpoon category fishery outside of the New England area. Finally, vessel owners/operators that fish outside the traditional New England area that wish to use a harpoon as a primary gear type would still be allowed to do so under the General category permit, albeit under General category retention limits and restrictions. The third alternative could also provide positive impacts to the traditional New England Harpoon category fishery since it would more closely track the BFT fall migration, and could eliminate the landing of any BFT under the Harpoon category quota outside of the area of the traditional fishery, but could be difficult to administer due to the difficulty in tracking the BFT migration.

The General category season is scheduled to end on December 31 of each fishing year or when the General category quota is harvested, whichever comes first. A winter fishery for large medium and giant BFT has existed in the south Atlantic since the early 1990s, and when quota is available, fish have been harvested under the General category. Two alternatives were considered that both extended the General category season to provide southern Atlantic fishermen with more access to the General category BFT quota in the late fall and winter. Alternative two would move the General category end date to January 31 of each fishing year. Overall economic impacts of this alternative to the General category BFT fishery as a whole would be neutral since the same overall amount of the General category quota would be landed and the value of the General category quota would not be changed. However, General category fishermen in the northern region may experience negative economic and social impacts since any unharvested quota as of December 31 would have been rolled over to the following year under the status quo alternative. General category fishermen in the southern region would be positively affected by this alternative as it would allow utilization of existing investment in gear and equipment especially if quota was still available for harvest after December 31. Under Alternative three, extending the General category end date to May 31, overall impacts would again be neutral, but northern General category fishermen could be more negatively affected and southern region fishermen could be more positively affected, depending on the amount of quota that remains after the season would have usually been closed. Alternative two was chosen as the preferred alternative since it minimizes negative impacts to northern area fishermen by providing a more limited southern fishery extension and provides positive impacts for southern area fishermen by allowing further utilization of gear and equipment previously invested in a southern area large medium and giant BFT fishery. Negative impacts on northern area fishermen could be slightly mitigated if they are willing to travel south late in the season, provided there is reciprocity among different states' permitting costs, and out-of-state fishermen are allowed under a coastal state's regulations to participate in a BFT commercial fishery, regardless of whether it occurs in federal or state waters.

As discussed above, the Purse seine and Harpoon categories have recently experienced difficulties in landing the full annual quota provided for each of these categories with the result of decreased annual gross revenues. Each of the alternatives associated with this issue modify the tolerance limits for large medium BFT and are analyzed to determine the change in opportunities to harvest the respective quotas in the designated time frames while balancing any ecological impacts of changed fishing mortality and potential dead discards. As NMFS currently has little information on discards for these categories, each preferred alternative for the Harpoon and Purse seine categories respectively includes implementation of a previously approved logbook program and the potential for an observer program.

The status quo alternative has had negative economic impacts with a resulting decrease in optimum yield on both the Purse seine and Harpoon categories since they have not been able to land and sell the full allotted quota. Alternatives two, three, and four, all related solely to the Purse seine category, were all designed to increase access to large medium BFT for the Purse Seine category and to increase the possibility of full quota attainment while balancing the need to control overall mortality and increased pressure on the large medium size class of BFT. Alternative two removes the 10% annual tolerance limit and maintains the 15 percent trip limit which could increase landings and gross revenue for the Purse seine category. Alternative three (preferred), which eliminates the trip limit and establishes the annual limit at 15 percent, would provide access to the same total amount of landings as Alternative two, but may also increase net revenues by increasing flexibility in meeting the annual tolerance limit. Alternative four could provide the greatest increase in access by decreasing the minimum size to 73 inches (185 cm) for the Purse Seine category; however, it was not chosen as the preferred alternative because of the associated potential negative ecological impact of a relatively large increase in overall BFT mortality with the large medium size class of BFT.

Alternatives five and six, related solely to the Harpoon category, were designed to increase access to large medium BFT for the Harpoon category and, similar to considerations with the Purse seine category, balance concerns regarding attainment of the quota allocation with an increase in mortality and negative ecological impacts. Alternative five would allow an increase in the daily retention limit for the Harpoon category from the status quo of one large medium BFT per day to two large medium BFT per day, and is preferred as it is expected to provide an acceptable balance between positive economic effects and a modest increase in mortality of large medium BFT due to a harpooner's ability to determine visually the size class of BFT prior to

throwing a harpoon. Alternative six would allow full access to the large medium size class by reducing the minimum size limit for the Harpoon category to 73 inches (185 cm), and would provide the most positive economic impacts. However, it was not chosen because of the potential negative ecological impact of a relatively large increase in mortality on large medium fish. Finally, alternative seven, unlike all other alternatives, would eliminate the tolerance for large medium size class and raise the minimum size of BFT to 81 inches (206 cm) in both the Purse seine and Harpoon categories. This alternative was considered due to the potential positive ecological impacts that would increase support of western Atlantic BFT stock rebuilding, but would likely have negative economic and social impacts and further impede full attainment of quota and optimum yield.

This proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

This proposed rule does not contain any new collection of information, reporting, record keeping, or other compliance requirements. NMFS intends, under existing regulations, to implement a vessel logbook program for five Purse seine category vessels that has previously been approved under OMB collection 0648–0371. As stated earlier, NMFS is considering a vessel logbook program for the Harpoon category in the future but is not proposing to implement a Harpoon vessel logbook program at this time.

NMFS prepared a draft Environmental Assessment (EA) for this proposed rule, and the AA has preliminarily concluded that there would be no significant impact on the human environment if this proposed rule were implemented. The EA presents analyses of the anticipated impacts of these proposed regulations and the alternatives considered. A copy of the EA and other analytical documents prepared for this proposed rule, are available from NMFS (see **ADDRESSES**).

NMFS has also preliminarily determined that these proposed regulations are consistent with the Atlantic Tunas Convention Act as well as with any International Commission for the Conservation of Atlantic Tunas Recommendations.

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

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act (ESA). A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. NMFS is currently implementing the reasonable and prudent alternative required by the BiOp. This proposed rule would not have any additional impact on sea turtles as these actions do not affect the use of pelagic longline gear, would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No irreversible or irretrievable commitments of resources are expected from this proposed action that would have the effect of foreclosing the implementation of the requirements of the BiOp.

The area in which this proposed action is planned has been identified as an Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of the Office of Sustainable Fisheries at NMFS. Based on the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, which analyzed the impacts of purse seine, harpoon, and rod and reel gear on EFH, this action is not anticipated to have any adverse impacts to EFH and, therefore, no consultation is required.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: November 3, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.23, paragraphs (d) and (e)(1) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(d) *Harpoon category.* Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land an unlimited number of giant BFT per day. An incidental catch of only two large medium BFT per vessel per day may be retained, possessed, or landed.

(e) * * *

(1) May retain, possess, land, or sell large medium BFT in amounts not exceeding 15 percent, by weight, of the total amount of giant BFT landed during that fishing year.

* * * * *

3. In § 635.27, paragraphs (a)(1)(i)(C), (a)(4)(i), and (a)(5) are revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(1) * * *

(i) * * *

(C) October 1 through January 31–10 percent.

* * * * *

(a) * * *

(4) * * *

(i) *Purse Seine category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT landings quota. The directed purse seine fishery for BFT commences on July 15 of each year.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels for which Harpoon category Atlantic Tunas permits have been issued is 3.9 percent of the overall U.S. BFT quota. The Harpoon category fishery closes on November 15 each year.

* * * * *

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Notices

Federal Register
Vol. 68, No. 217
Monday, November 10, 2003

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 4, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured to having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Cooperative State Research, Education, and Extension Service

Title: Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance Organization Information.

OMB Control Number: 0524–0026.

Summary of Collection: The Cooperative State Research, Education, and Extension Service (CSREES) has primary responsibility for providing linkages between the Federal and State components of a broad-based, national agricultural research, extension, and higher education system. Focused on national issues, its purpose is to represent the Secretary of Agriculture and the intent of Congress by administering formula and grant funds appropriated for agricultural research, extension, and higher education. Before awards can be made, certain information is required from applicant to assure compliance with the civil rights laws and to effectively assess the potential recipient's capacity to manage Federal funds. CSREES will collect information using forms CSREES 665, "Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance" and CSREES 666, "Organizational Information."

Need and Use of the Information: CSREES will collect information to determine that applicants recommended for awards are responsible recipients of Federal funds and that applicant agrees they will offer programs to all eligible persons without regard to race, color, national origin, sex, disability, age, political beliefs, religion, marital status, or familial status. If the information were not collected, it would not be possible to determine that the prospective grantees are responsible and are complying with the Civil Rights Act.

Description of Respondents: Not-for-profit institutions; business or other for-profit; individuals or households; State, Local or Tribal Government.

Number of Respondents: 150.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,020.

Foreign Agricultural Service

Title: Dairy Tariff-Rate Import Quota Licensing Regulation.

OMB Control Number: 0551–0001.

Summary of Collection: The Importation of most cheese made from cow's milk and certain non-cheese dairy articles (butter, dried milk, and butter substitutes) are subject to Tariff-rate Quotas (TRQs) and must be accompanied by an import license issue by the Department to enter at the lower tariff. Licenses are issued in accordance with the Department's Import Licensing Regulation (7 CFR part 6). Importers without licenses may enter these dairy articles, but are required to pay the higher tariff. The Department issues three types of licenses: Historical license (renewable), non-historical licenses (non-renewable); and preferred cheese licenses issued to importers designated by the government of a foreign country. The Foreign Agricultural Service (FAS) will collect information using several forms.

Need and Use of the Information: FAS will use the information to assure that the intent of the legislation is correctly administered and to determine eligibility to obtain benefits under the Import Regulation. If the information were collected less frequently, FSA would be unable to issue licenses on an annual basis in compliance with the Import Regulation.

Description of Respondents: Business or other-for-profit; individuals or households.

Number of Respondents: 540.

Frequency of Responses: Recordkeeping, reporting: Annually.

Total Burden House: 426.

Animal and Plant Health Inspection Service

Title: Phytosanitary Certificates for Imported Articles to Prevent Introduction of Potato Brown Rot.

OMB Control Number: 0579–0221.

Summary of Collection: The United States Department of Agriculture is responsible for preventing plant disease or insect pests from entering the United States, preventing the spread of pests and noxious weeds not widely distributed in the United State, and eradicating those imported pests when eradication is necessary. The Plant Protection Act authorizes the Department to carry out this mission. Also, the regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pest. The Animal

Plant and Health Inspection Service (APHIS) amended regulations to require a phytosanitary certificate to accompany articles of *Pelargonium* spp. and *Solanum* spp. imported into the United States, except those imported under the Canadian greenhouse restricted plant program. Recently, APHIS became aware that articles have *Pelargonium* spp. and *Solanum* spp. can serve as vectors for the transmission of potato brown rot. This bacterium is widely distributed in temperature areas of the world and could cause severe damage to U.S. production of potatoes, if it were to become established in the United States.

Need and Use of the Information: A Phytosanitary Certificate is required from each foreign country for articles *Pelargonium* spp. and *Solanum* spp. offered for importation into the United States. The certificate must contain either a declaration that the production facility in which the articles were produced has been found free, by testing, of *R. solanacearum* race 3 biovar 2 or that *R. solanacearum* race 3 biovar 2 is not present in the region in which the articles were produced. If the information is not collected, potato fields could become infected with the strain of *R. solanacearum* and this could drastically reduce or eliminate potato fields.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 1,040.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 83,200.

Food and Nutrition Service

Title: Generic Clearance to Conduct Formative Research.

OMB Control Number: 0584–NEW.

Summary of Collection: Diet has a significant impact on the health of citizens and is linked to four leading causes of disease, which can reduce the quality of life and cause premature death. While these diet-related problems affect all Americans, they have a greater impact on the disadvantaged populations reached by many of the Food and Nutrition Service (FNS) programs. One of FNS' goals includes improving the nutrition of children and low-income families by providing access to program benefits and nutrition education. The basis of FNS' approach rests on the philosophies that all health communications and social marketing activities must be science-based, theoretically grounded, audience-driven, and results-oriented. FNS will collect information through formative research methods that will include focus groups, interviews (dyad, triad, telephone, etc.), surveys and web-based information gathering tools. The formative research is essential to advancing "Eat Smart Play Hard" Campaign as well as other FNS nutrition education and outreach efforts.

Need and Use of the Information: FNS will collect information to provide formative input and feedback on how bets to reach and motivate the targeted population. The collected information will provide input regarding the potential use of materials and products during both the developmental and testing stages. FNS will also collect information regarding effective nutrition education and outreach initiatives being implemented by State agencies that administer nutrition assistance programs to address critical nutrition program access issues.

Description of Respondents: Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 14,500.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 5,100.

Food and Nutrition Service

Title: Generic Clearance to Conduct Formative Research/CNPP.

OMB Control Number: 0584–NEW.

Summary of Collection: The Center for Nutrition Policy and Promotion (CNPP) of the U.S. Department of Agriculture is interested in conducting consumer research to identify key issues of concern related to understanding and use of the *Dietary Guidelines for Americans* and the *Food Guide Pyramid*. The mission of CNPP is to improve the nutritional status of Americans by developing and promoting science-based dietary guidance and economic information for the public. CNPP will be conducting a formative research with consumers to examine their understanding of the *Dietary Guideline* and *Pyramid* concepts and their use of and barriers to using both the *Guidelines* and the *Pyramid*. CNPP believes that obtaining qualitative information from consumer is fundamentally necessary for reassessing and revising the *Dietary Guidelines for Americans* and the *Food Guide Pyramid*. CNPP will collect information using focus groups, qualitative interviews, and Web-based surveys.

Need and Use of the Information: CNPP will collect information to develop practical and meaningful food and nutrition guidance for Americans to help improve their diets. The information will also be used to expand the knowledge base concerning how the *Dietary Guidelines for Americans* and the *Food Guide Pyramid* recommendations and messages are understood as well as how they can be used by consumers to improve diets while overcoming barriers.

Description of Respondents: Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 9,950.

Frequency of Responses: Reporting: Other (individual projects).

Total Burden Hours: 3,379.

Forest Service

Title: Objection to New Land Management Plans, Plan Amendments, and Plan Revisions.

OMB Control Number: 0596–0158.

Summary of Collection: The current appeals process for land and resource management plans and regional guides is set forth in 36 CFR 217.1–217.19 which provides an opportunity to challenge a Forest Service (FS) decision after the responsible official has made a final decision. A person objecting to a proposed or revised plan must file their objection in writing within 30 days of the publication, in a newspaper of record, with the reviewing. The objector must provide name, mailing address and telephone number; a statement of the information or decisions to which the person or organization objects; a description of the part or parts of the plan, plan amendment or plan revision being objected to; and a concise statement explaining why the responsible official's pending decision should not be adopted.

Need and Use of the Information: Information gathered in the objection process will be analyzed and responded to be a Forest Service official and possibly used to modify the decision on land and resource management planning. Without the information, the Agency's decision making will suffer from reduced public input and Agency relationships with the public will deteriorate.

Description of Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 1,210.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 1,210.

Foreign Agricultural Service

Title: CCC's Export Enhancement Program (EEP) and CCC's Dairy Export Incentive Program (DEIP).

OMB Control Number: 0551–0028.

Summary of Collection: The Foreign Agricultural Service (FAS) collects

information from U.S. exporters in order to determine the exporters' eligibility for the Export Enhancement Program (EEP) and the Dairy Export Incentive Program (DEIP). Information can be faxed in by program applicants or applicants may register over the Internet.

Need and Use of the Information: Information collected from U.S. Exporters is used by FAS to determine whether an exporter has the experience necessary to perform under the proposed agreements. Other information is collected to determine compliance during the period of the agreement and to ensure that compensation in the appropriate amount is made. Without the application and related information, FAS would be unable to properly qualify U.S. Exporters for EEP and DEIP.

Description of Respondents: Business or other for-profit.

Number of Respondents: 26.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 1,803.

Economic Research Service

Title: An Assessment of the Impact of Medicaid Managed Care on WIC Program Coordination with Primary Care Services.

OMB Control Number: 0536–NEW.

Summary of Collection: The Economic Research Service (ERS) has responsibility, as authorized in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act. Fiscal Year 2002 (Pub. L. 1–7–76) to conduct economic research on the operation of the Nation's food assistance programs, especially the Food Stamp Program, Child Nutrition Programs, and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The relationship between the WIC program and primary care services is an important component of the program. ERS is seeking detailed information that will determine the impact Medicaid managed care may have on the ability of WIC to coordinate services with primary care providers. The study will be conducted through telephone surveys and e-mail.

Need and Use of the Information: ERS will collect information to understanding the impact of Medicaid managed care on the coordination between WIC and primary care services in a way that will be relevant to public policymakers. Data from the study can be used by FNS to assess how well existing program policies and procedures facilitate coordination and referral between WIC and Medicaid managed care.

Description of Respondents: State, Local or Tribal Government; business or other for-profit.

Number of Respondents: 210.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 132.

Forest Service

Title: National Survey on Recreation and the Environment 2005.

OMB Control Number: 0596–0127.

Summary of Collection: The National Survey on Recreation and the Environment (NSRE) 2005 will be the latest in a series of surveys conducted by the Forest Service (FS) which began in 1960 as the primary source of recreation data from the U.S. population. This information is vital for federal land managing agencies to obtain an understanding of the outdoor recreation participation levels and preferences of the American people so that effective policy making, planning, and decision-making can occur. Information from the survey is shared with and relied upon by organizations outside the federal government including educational institutions, private sector companies, state agencies, and other governmental organizations as the fundamental source of outdoor recreation trend and demand data on a national scale. The survey will be administered using a statistically valid sampling methodology through computer-assisted telephone interviewing techniques.

Need and Use of the Information: FS will collect information nationally from the public to assess trends in recreation participation over the years and to estimate demand for outdoor recreation among the U.S. population. FS and other federal agencies will use the information to develop long-range strategic plans, adjust programs and activities to meet customer needs and expectations and better manage federally owned lands.

Description of Respondents: Individuals or households.

Number of Respondents: 16,666.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 4,166.

National Agricultural Statistics Service

Title: List Sampling Frame Survey.

OMB Control Number: 0535–0140.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistic, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies heavily on the use of sample surveys statistically drawn from "List Sampling Frame." The List Sampling Frame is a database of names and addresses, with control data, that contains the components from which these samples can be drawn.

Need and Use of the Information: The List Sampling Frame is used to maintain a complete list of possible farm operations. The goal is to produce for each state a relatively complete, current, and unduplicated list of names to sample for agricultural operation surveys. Government agencies and educational institutions use the information from these surveys in planning, farm policy analysis, and program administration.

Description of Respondents: Farms; business or other for-profit.

Number of Respondents: 350,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 22,500.

National Agriculture Statistics Service

Title: Childhood Injury and Adult Occupational Injury Survey of Minority Farm Operators.

OMB Control Number: 0535–0235.

Summary of Collection: The primary function of the National Agricultural Statistics Services (NASS) is to prepare and issue state and national estimates of crop and livestock production under the authority of 7 U.S.C. 2204(a). NASS will conduct a survey that will provide estimates of annual childhood and adult nonfatal injury incidence rates on minority farms, annual injury frequencies, and descriptive injury information for minority farm operators and their employees 20 years of age or older.

Need and Use of the Information: The National Institute of Occupational Safety Health will use the data to develop injury prevention materials for minority farm operators and technical reports. The objective of this project is to develop a uniform inquiry for determining the incidence rate and characteristics of childhood agricultural and adult occupational injuries occurring on minority operated farms in the United States.

Description of Respondents: Farms.

Number of Respondents: 50,000.

Frequency of Responses: Reporting: Other (One-Time).

Total Burden Hours: 12,093.

Rural Utilities Service

Title: Preloan Procedures and Requirements for Telecommunications Program.

OMB Control Number: 0572–0079.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency

of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance telecommunications, electric, water and waste facilities in rural areas. RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (RE Act) and has a loan portfolio that totals approximately $42 billion. Section 201 of the RE Act authorizes the Administrator to make loans to qualified telephone companies for the purpose of providing telephone service to the widest practicable number of rural subscribers.

Need and Use of the Information: RUS will collect information using several forms to determine an applicant's eligibility to borrow from RUS under the terms of the RE Act. The information is also used to determine that the Government's security for loans made by RUS are reasonably adequate and that the loans will be repaid within the time agreed. Without the information, RUS could not effectively monitor each borrower's compliance with the loan terms and conditions to properly ensure continued loan security.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 50.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,621.

Rural Utilities Service

Title: 7 CFR Part 1778, Emergency and Imminent Community Water Assistance Grants.

OMB Control Number: 0572–0110.

Summary of Collection: The Rural Utilities Service (RUS) is authorized under section 306A of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(a)) to provide grants to rural areas and small communities to secure adequate quantities of safe water. Grants made under this program shall be made for 100 percent of the project cost can serve rural areas with population not in excess of 5,000 and household income should not exceed 100 percent of a State's non-metropolitan medial household income. Grants under this program may be made to public bodies and private nonprofit corporations serving rural areas.

Need and Use of the Information: RUS will collect the information from applicants applying for grants under 7 CFR part 1778. The information is unique to each borrower and emergency situation. Applicants must demonstrate that there is an imminent emergency or that a decline occurred within 2 years of the date the application was filed with Rural Development.

Description of Respondents: State, Local or Tribal Government; not-for-profit institutions.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 400.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–28218 Filed 11–7–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, Idaho; Lick Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of cancellation of an environmental impact statement.

SUMMARY: On July 10, 2002, the USDA Forest Service published in the **Federal Register** (67 FR 45699) a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Lick Timber Sale project on the Council Ranger District of the Payette National Forest. The Forest Service has conducted a scoping process, and as a result of initial environmental analysis, has reduced the scope and scale of the project. The reconfigured proposed action is appropriate for analysis in an environmental assessment (EA) instead of an EIS. Therefore, an EIS will not be prepared, and the NOI is hereby canceled.

FOR FURTHER INFORMATION CONTACT: Questions about the cancellation of the NOI should be directed to Bill Spoerer, Environmental Coordinator, Council Ranger District, Payette National Forest, P.O. Box 567, Council, Idaho, 83612, phone (208) 253–0100.

Dated: November 3, 2003.

Robert S. Giles,

Acting Forest Supervisor.

[FR Doc. 03–28154 Filed 11–7–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Baht Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) on a proposal to harvest timber in the Baht Timber Sale project area, Wrangell Ranger District, Tongass National Forest. The proposed action is to harvest an estimated 15 million board feet (31,000 ccf) on approximately 1150 acres with about 6 miles of new road construction. The range of alternatives being developed to respond to the significant issues, besides no-action, will likely be 8–33 million board feet (16,000–67,000 ccf) of timber on an estimated 500–1300 acres in one or more timber sales. The purpose and need of the timber sale is to: contribute to the production of a sustained yield of timber and mix of other resource activities from the Tongass National Forest, consistent with Forest Plan Standards and Guidelines; seek to provide a timber supply sufficient to meet the annual and planning cycle market demand for Tongass National Forest timber; provide a diversity of opportunities for resource uses that contribute to the economies of Southeast Alaska; and support a wide range of natural resource employment opportunities within Southeast Alaska's communities. The Tongass Forest Supervisor will decide on whether or not to harvest timber from this area, and if so, how this timber would be harvested. The decision will be documented in a Record of Decision based on the information disclosed in the EIS and the goals, objectives and desired future conditions as stated in the Forest Plan.

DATES: Opportunities for comment are available throughout the process. Individuals interested in receiving a scoping package should contact us within 30 days of the publication of this NOI. Comments will be most helpful if received by December 12, 2003. Additional opportunities for comment will be provided after release of the Draft EIS, anticipated in early spring of 2004.

ADDRESSES: Please send written comments to Wrangell Ranger District; Attn: Baht EIS; PO Box 51, Wrangell, AK 99929.

FOR FURTHER INFORMATION CONTACT: Chip Weber, District Ranger, or Linda Christian, IDT Leader, Wrangell Ranger District, Tongass National Forest, P.O. Box 51, Wrangell, AK 99929 telephone (907) 874–2323.

SUPPLEMENTARY INFORMATION: The proposed action is to harvest an estimated 15 million board feet (31,000 ccf) on approximately 1150 acres with about six miles of new road

construction. The range of alternatives being developed to respond to the significant issues, besides no-action, will likely be 8–33 million board feet (16,000–67,000 ccf) of timber on an estimated 500–1300 acres in one or more timber sales. The purpose and need of the timber sale is to: Contribute to the production of a sustained yield of timber and mix of other resource activities from the Tongass National Forest, consistent with Forest Plan Standards and Guidelines; seek to provide a timber supply sufficient to meet the annual and planning cycle market demand for Tongass National Forest Timber; provide a diversity of opportunities for resource uses that contribute to the economies of Southeast Alaska; and support a wide range of natural resource employment opportunities within Southeast Alaska's communities.

The proposed timber harvest is located within Tongass Forest Plan Value Comparison Units 456, 457, 458 and 459 on Zarembo Island, Alaska, Wrangell Ranger District of the Tongass National Forest. This proposed project is fully compliant with the Roadless Area Conservation rule (Roadless Rule, January 12, 2001) as all harvest and roads are proposed in previously developed areas. The sale is currently listed on the Tongass 10-year action plan to be sold in 2006. The repercussions of delaying the project planning process regarding road building and timber harvest, even for a relatively short period, can have a significant effect on the amount of timber available for sale on the Tongass over the next few years. The Baht Timber Sale Project is consistent with the 1997 Tongass Land Management Plan.

Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Tribal Governments, Federal, State, and local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and, (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Written scoping comments are being solicited through a scoping package that will be sent to the project mailing list. For the Forest Service to best use the scoping input, comments should be received by December 12, 2003. Tentative issues identified for analysis in the EIS include the potential effects of the project on and the relationship of the project to: old-growth ecosystem management and the maintenance of habitat for viable populations of wildlife species, timber sale economics, road construction/access management and water quality.

Based on results of scoping and the resource capabilities within the project area, alternatives including a "no action" alternative will be developed for the Draft Environmental Impact Statement (Draft EIS). The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in early spring of 2004. The Final EIS is anticipated by January 2005.

The comment period on the draft environmental impact statement will be 45 days from the date that the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553, (1978). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 4900 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the draft environmental impact statement should be specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the drafts environmental impact statements or the merits of the alternatives formulated and discuses in the statement. Reviewers may wish to refer to the Council on Environmental Qualify Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Pemits: Permits required for implementation include the following:

1. U.S. Army Corp of Engineers
   —Approvals of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
   —Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;
2. Environmental Protection Agency
   —National Pollutant Discharge Elimination System (402) Permit;
   —Review Spill Prevention Control and Countermeasure Plan;
3. State of Alaska, Department of Natural Resources
   —Tideland Permit and Lease or Easement;
4. State of Alaska, Department of Environmental Conservation
   —Solid Waste Disposal Permit;
   —Certification of Compliance with Alaska Water Quality Standards (401 Certification)

Responsible Official: The Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and

policies in making the decision and stating the rationale in the Record of Decision.

Dated: November 3, 2003.

Forrest Cole,

Forest Supervisor.

[FR Doc. 03–28159 Filed 11–07–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic Province Advisory Committee (OPAC) will meet on Friday, December 5, 2003. The meeting will be held at the Olympic National Forest Headquarters, 1835 Black Lake Blvd., SW., Olympia, Washington. The meeting will begin at 9:30 a.m. and end at approximately 3 p.m. Agenda topics are: Current status of key Forest issues; Year-end Accomplishments; NW Forest Plan Monitoring Review; Five-Year Programmatic Agreement; Update on Storm Damage to Olympic National Forest and Park roads, trails and facilities; NW Forest Plan Action for FY2004; Open forum; Public comments.

All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA Olympic National Forest Headquarters, 1835 Black Lake Blvd., Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor, at (360) 956–2301.

Dated: November 4, 2003.

Dale Hom,

Forest Supervisor, Olympic National Forest.

[FR Doc. 03–28157 Filed 11–7–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Idaho Panhandle National Forest's Idaho Panhandle Resource Advisory Committee will meet Friday, November 21, 2003 at 9:30 a.m. in Coeur d'Alene, Idaho for a business meeting. The business meeting is open to the public.

DATES: November 21, 2003.

ADDRESSES: The meeting location is the Idaho Panhandle National Forests' Supervisor's Office, located at 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Official, at (208) 765–7369.

SUPPLEMENTARY INFORMATION: The meeting agenda will focus on reviewing project proposals for fiscal year 2004 and recommending funding for projects during the business meeting. The public forum begins at 1 p.m.

Dated: November 4, 2003.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 03–28158 Filed 11–7–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent To Seek Approval to Collect Information

AGENCY: Agricultural Research Service, National Agricultural Library, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for a new information collection from the Information Services Division to obtain an evaluation of user satisfaction with NAL Internet sites.

DATES: Comments on this notice must be received by January 14, 2004, to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to John Gladstone, Project Manager, 10301 Baltimore Ave., Room 011; Beltsville, MD 20705. Submit electronic comments to *jgladsto@nal.usda.gov.*

FOR FURTHER INFORMATION CONTACT: John Gladstone, Phone: 301–504–5462; Fax: (301) 504–7473.

SUPPLEMENTARY INFORMATION:

Title: "Evaluation of User Satisfaction with NAL Internet Sites."

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for new data collection.

Abstract: This is a request, made by the National Agricultural Library (NAL) Office of the Director (OD), Office of the Associate Director of Information Services, that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, a three year generic clearance for the NAL to conduct user satisfaction research around its Internet sites. This effort is made according to Executive Order 12862 (Attachment A, ppl-2), which directs federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

The National Agricultural Library Internet sites are a vast collection of Web pages created and maintained by component organizations of the NAL, and is visited by 3.4 million people per month on average. All seven of the NAL Information Centers and a dozen special interest collections have established a Web presence with a home page and links to sub-pages that provide information to their respective audiences.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: The agricultural community, USDA personnel and their cooperators, and including public and private users or providers of agricultural information.

Estimated Number of Respondents: 1200 per year.

Estimated Total Annual Burden on Respondents: 1003 hours.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (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 those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All

responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: October 24, 2003.

Caird E. Rexroad,

Acting Administrator, ARS.

[FR Doc. 03–28220 Filed 11–7–03; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Request for Special Priorities Assistance

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice and request for comments.

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 January 9, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Office of the Chief Information Officer, 202–482–0266, Room 6625, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, Department of Commerce, BIS Office of the Chief Information Officer, Room 6622, 14th and Constitution Avenue, NW., Washington DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collected on BIS–999, from defense contractors and suppliers, is required for the enforcement and administration of the Defense Production Act and the Selective Service Act to provide Special Priorities Assistance under the Defense Priorities and Allocation System (DPAS) regulation (15 CFR part 700).

II. Method of Collection

Written or electronic submission.

III. Data

OMB Number: 0694–0057.

Form Number: BIS–999.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1,200.

Estimated Time Per Response: 30 minutes per response.

Estimated Total Annual Burden Hours: 600.

Estimated Total Annual Cost: No start-up capital expenditures.

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 will also become a matter of public record.

Dated: November 4, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–28049 Filed 11–7–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results and partial rescission of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain forged stainless steel flanges (stainless steel flanges) from India (A–533–809) manufactured by Chandan Steel Ltd. (Chandan), Isibars Ltd. (Isibars), and Viraj Forgings Ltd. (Viraj). The period of review (POR) is February 1, 2002, through January 31, 2003. We preliminary determine that these respondents did not make sales of stainless steel flanges below the normal value (NV). In addition, we have determined to rescind the review with respect to Shree Ganesh Forgings Ltd. (Shree Ganesh). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between United States price and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument.

EFFECTIVE DATE: November 10, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Mike Heaney, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–5222 or (202) 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1994, the Department published the antidumping duty order on stainless steel flanges from India (59 FR 5994). On February 3, 2003, the Department published the notice of "Opportunity to Request Administrative Review" for this order covering the period February 1, 2002 through January 31, 2003 (68 FR 5272). In accordance with 19 CFR 351.213(b)(2), on February 28, 2003, Chandan, Isibars, Shree Ganesh, and Viraj requested a review. On March 18, 2003, we initiated this antidumping duty administrative review, and on March 25, 2003, we published in the **Federal Register** a notice of initiation (68 FR 14394).

Partial Rescission

Pursuant to 19 CFR 351.213(d), the Department will rescind an administrative review if a party withdraws its request for review within 90 days of the publication of our Notice of Initiation. On April 23, 2003, Shree Ganesh withdrew its request for review.

As Shree Ganesh withdrew its request for review within 90 days of our Notice of Initiation, and as no other party requested a review of Shree Ganesh, we hereby rescind the review with respect to Shree Ganesh.

Scope of the Review

The products under review are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld-neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Period of Review (POR)

The POR is February 1, 2002, through January 31, 2003.

Fair Value Comparisons

To determine whether sales of flanges from India were made in the United States at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(I) of the Tariff Act, we calculated EPs and CEPs and compared these prices to weighted-average normal values or CVs, as appropriate.

Export Price and Constructed Export Price

In accordance with section 772 of the Tariff Act, we calculated either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Tariff Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Tariff Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Tariff Act.

We calculated EP and CEP, as appropriate, based on prices charged to the first unaffiliated customer in the United States. We used the date of invoice as the date of sale. We based EP on the packed C&F, CIF duty paid, FOB, or ex-dock duty paid prices to the first unaffiliated purchasers in the United States. We added to U.S. price amounts for duty drawback, when reported, pursuant to section 772(c)(1)(B) of the Tariff Act. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, including: foreign inland freight, foreign brokerage and handling, bank export document handling charges, ocean freight, and marine insurance.

In addition, for Viraj's CEP sales, in accordance with section 772(d)(1) of the Tariff Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*i.e.*, credit), and imputed inventory carrying costs. In accordance with section 772(d)(3) of the Tariff Act, we deducted an amount for profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Tariff Act.

Normal Value

A. Viability

In order to determine whether there is sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product during the POR is equal to or greater than five percent of the aggregate volume of U.S. sales of subject merchandise during the POR), for each respondent we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Since we found no reason to determine that quantity was not the appropriate basis for these comparisons, we did not use value as the measure. *See* 19 CFR 351.404(b)(2).

As in prior reviews, we based our comparisons of the volume of U.S. sales to the volume of home market sales on reported stainless steel flange weight, rather than on number of pieces; since flange sizes, prices and costs vary greatly across models, comparisons of aggregate data based on the number of pieces could be misleading.

We determined that for Viraj, the home market was viable because Viraj's home market sales were greater than 5 percent of its U.S. sales based on aggregate volume by weight. Because Isibars reported no home market or third country sales, we based NV on CV, pursuant to section 351.404(a) of the Department's regulations. For Chandan, pursuant to section 351.404(e), we used the United Kingdom as the comparison market, because it was Chandan's largest export market, Chandan's volume there exceeded five percent of its U.S. volume of subject merchandise in the POR, and there is no evidence on the record indicating the United Kingdom would be inappropriate to serve as the basis for NV.

B. Arm's Length Sales

Since no information on the record indicates any comparison market sales to affiliates, we did not use an arm's-length test for comparison market sales.

C. Cost of Production Analysis

In the most recently completed review, Viraj made sales which failed the cost test. Therefore, pursuant to section 773(b)(2)(A)(ii) of the Tariff Act, in this review we had a reasonable basis to believe or suspect that Viraj made sales in the home market below the cost of production (COP). *See Certain Forged Stainless Steel Flanges From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review* 68 FR 42005 (July 16, 2003); for the cost test results in particular, which were unchanged in the final results, *see Certain Forged Stainless Steel Flanges from India, Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 11361 (March 10, 2003). Therefore, pursuant to section 773(b)(1) of the Tariff Act, in this review we initiated an investigation to determine whether Viraj's sales of flanges were made at prices below COP during the POR.

We based product definitions for both model-matching and costs on grade, flange type, size, pressure rating, and finish. Where necessary, we converted costs from a per-piece basis to a per-kilogram basis. *See* the company-specific analysis memoranda, dated October 31, 2003 and available in the Central Records Unit.

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP for Viraj based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A) and packing. We relied on the home market sales and COP information provided by Viraj. After calculating COP, we tested whether home market sales of stainless steel flanges were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of a respondent's home market sales for a model are at prices less than the COP, we do not disregard any below-cost sales of that model because we determine that the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of a respondent's home market sales of a given model are at prices less than COP, we disregard the below-cost sales because they are (1) made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act, and (2) based on comparisons of prices to weighted-average COPs for the POR, were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Tariff Act.

The results of our cost test for Viraj indicated that for certain comparison market models, less than 20 percent of the sales of the model were at prices below COP. We therefore retained all sales of these comparison market models in our analysis and used them as the basis for determining NV. Our cost test also indicated that within an extended period of time (one year, in accordance with section 773(b)(2)(B) of the Tariff Act), for certain comparison market models, more than 20 percent of the comparison market sales were sold at prices below COP. In accordance with section 773(b)(1) of the Tariff Act, we therefore excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Product Comparisons

We compared Viraj's U.S. sales with contemporaneous sales of the foreign like product in the home market, and Chandan's U.S. sales to its contemporaneous sales of the foreign like product in the United Kingdom. We considered stainless steel flanges identical based on matching grade, type, size, pressure rating and finish. We used a 20 percent difference-in-merchandise (DIFMER) cost deviation limit as the maximum difference in cost allowable for similar merchandise, the DIFMER being defined as the absolute value of the difference between the U.S. and comparison market variable costs of manufacturing, divided by the total cost of manufacturing of the U.S. product.

E. Level of Trade

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. To determine whether comparison market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Chandan reported no difference in selling activities in the U.S. and comparison market, and made no claim for an LOT adjustment. We noted no significant differences in functions provided in either of Chandan's markets. Based upon the record evidence, we have determined that there is no difference in LOT between Chandan's U.S. market and third market sales, and therefore we made no LOT adjustment, per 19 CFR 351.412(c)(2).

Viraj also claimed no LOT adjustment, and we noted no differences in selling services provided, in either its EP or CEP sales, between the U.S. and home markets. Therefore, based upon the record evidence, we have determined that there is no difference in level of trade between Viraj's U.S. market and home market sales, and no LOT adjustment is appropriate, per 19 CFR 351.412(c)(2).

F. Comparison Market Price

For Chandan and Viraj, in the United Kingdom and India markets, respectively, we based comparison market prices on the packed, ex-factory or delivered prices to the unaffiliated purchasers. We made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act, and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. For comparison to EP we made COS adjustments by deducting comparison market direct selling expenses and adding U.S. direct selling expenses.

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a contemporaneous comparison market match for the U.S. sale. We calculated CV based on the cost of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average comparison market selling expenses. Where appropriate, we made COS adjustments to CV in accordance with section 773(a)(8) of the Tariff Act and 19 CFR 351.410. We also made adjustments, where applicable, for comparison market indirect selling expenses to offset commissions in EP comparisons.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margins for the period February 1, 2002, through January 31, 2003, to be as follows:

Manufacturer/exporter	Margin (percent)
Chandan	0
Isibars	0
Viraj	0.04 (*de minimis*)

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, (2) a brief

summary of the argument and (3) a table of authorities. The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Duty Assessment and Cash Deposit Requirements

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total quantity (in kilograms) of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of merchandise of that manufacturer/exporter made during the POR. The Department will issue appropriate appraisement instructions directly to CBP upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of flanges from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be the rates established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or any previous reviews, the cash deposit rate will be 162.14 percent, the "all others" rate established in the LTFV investigation (59 FR 5994) (February 9, 1994).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: October 31, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–28225 Filed 11–7–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080803C]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys in the Mid-Atlantic Ocean

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys in the Mid-Atlantic Ocean has been issued to Lamont-Doherty Earth Observatory (LDEO).

DATES: Effective from October 23, 2003 through October 22, 2004.

ADDRESSES: The application, a list of references used in this document, and/or the IHA are available by writing to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here.

FOR FURTHER INFORMATION CONTACT: Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking 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 and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under Section 3(18)(A), the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term "Level A harassment" means harassment described in subparagraph (A)(i). The term "Level B harassment" means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On July 21, 2003, NMFS received an application from LDEO for the taking,

by harassment, of several species of marine mammals incidental to conducting a seismic survey program. As presently scheduled, two seismic surveys will be conducted in the Mid-Atlantic Ocean. The Trans-Atlantic Geotransect (TAG) cruise will be centered at 26°N and 45°W in the Mid-Atlantic Ocean during late October 2003, for a total of six days of seismic surveying. The Atlantic Deep Western Boundary Current (ADWBC) cruise will occur between 39° and 42°N and between 45° and 52.5°W, during July and August of 2004 for a total of approximately 20 days of surveying. These operations will take place in international waters.

The seismic survey work conducted during the TAG cruise is part of a multi-disciplinary experiment, taking place in the TAG Active Mound area over a period of nine months. The TAG active mound (26°N on the Mid-Atlantic Ridge), which is one of the largest hydrothermal deposits found to date on the seafloor, is a large, focused mineral deposit on a slow-spreading ridge. The purpose of the TAG cruise is to delineate the nature, position, and size of any heat sources (low-velocity zones) that might drive convection at the TAG active mound, and more generally, to provide an understanding of crustal architecture in the TAG region. More specifically, the TAG experiment will address key issues at the TAG site: (1) the nature of the heat source driving circulation, (2) the relationship between faulting on the eastern flank and fluid flow at the mound, (3) the possible existence of a low-velocity zone beneath the rise axis, and (4) the hydraulic connectivity of the shallow TAG mound.

The ADWBC cruise will determine the configuration, age, and paleoceanographic significance of the sedimentary sequences on J Anomaly Ridge and Southeast Newfoundland Ridge, which may show evidence for strong boundary currents dating to the early Paleocene. Proposed tracklines for the seismic survey were chosen with four primary objectives in mind: (1) to map the main reflection sequences across the full extent of the ridges and onto the edges of adjacent abyssal plains, (2) to obtain continuity in tracing sequences by profiling around major interruptions (seamounts) and optimizing track crossings, (3) to provide abundant crossing lines in areas where existing seismic and bathymetric data suggest that there are outcrops of pre-Neogene strata, and (4) to take advantage of good-quality seismic data, where they exist (*e.g.*, Conrad 2510 MCS), in order to make loop correlations between tracks.

Description of the Activity

The TAG seismic survey will involve a single vessel which will conduct the seismic work, the *R/V Maurice Ewing*, operated by LDEO under a cooperative agreement with the U.S. National Science Foundation (NSF), owner of the vessel. The *Maurice Ewing* will deploy an array of 20 airguns as an energy source, and will deploy and retrieve Ocean Bottom Hydrophones (OBHs). A hydrophone streamer will not be towed during the TAG cruise. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. As the airgun array is towed along the survey lines, the OBHs and Ocean Bottom Seismometers (OBSs) will receive the reflected signals and transfer the data to the onboard processing system. All planned geophysical data acquisition activities will be conducted by LDEO scientists with onboard assistance by the scientists who proposed the study. The TAG program will consist of 185 km (100 n.mi.) of survey lines. There will be a total of three seismic lines, two along- and one across-axis of the TAG. Water depths in the area will vary from 1500 to 4500 m (4921–14,764 ft).

The ADWBC cruise will involve the oceanographic research vessel *R/V Knorr*, a U.S. Navy-owned ship operated by the Woods Hole Oceanographic Institution (WHOI), and will use a portable LDEO seismic system to conduct the seismic survey. The vessel will deploy 2 General Injector (GI)-guns as an energy source plus a towed streamer containing hydrophones to receive the returning acoustic signals. The hydrophone array will consist of a 600–m (1969 ft) solid state streamer with a 200–m (656 ft) tow leader. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. As the 2 GI-guns are towed along the survey line, the hydrophone array will receive the returning signals and transfer the data to the onboard processing system. All planned geophysical activities will be conducted by the scientists who have proposed the study, while LDEO will provide the portable high-resolution seismic system that will support the seismic surveys for the proposed study. The ADWBC program will consist of 4334 km (2340 n.mi.) of seismic profiles that will be shot over a period of 20 days. The most detailed grids of seismic lines are proposed for the southern end of J Anomaly Ridge and for moats around seamounts on the crest of the Southeast Newfoundland Ridge - both are areas where there appear to be extensive pre-Neogene outcrops. Water depths in the area will vary from 4000 – 5000 m (13,124–16,405 ft).

The procedures to be used for the two seismic studies will be similar to those used during previous seismic surveys by LDEO, *e.g.*, in the equatorial Pacific Ocean (Carbotte *et al.*, 1998, 2000). The proposed seismic surveys will use conventional seismic methodology with a towed airgun array as the energy source, and either a towed hydrophone streamer or OBH and OBS receivers placed on the bottom to receive the reflected signals. For the TAG survey, eighteen OBHs will be deployed (and recovered) by the *Maurice Ewing* - eight along each of the long axis lines and two on the across axis line. After the seismic lines are shot, the data will be downloaded and the OBSs will be retrieved during an, as of yet, unscheduled cruise in the summer of 2004 (during which no seismic sound sources will be used). Along three selected seismic lines, 13 OBS receivers will be placed in the proposed study area by the *R/V Alvin* from 7–24 June 2003, before the arrival of the *Maurice Ewing*. In addition, a multi-beam bathymetric sonar will be operated from the source vessel continuously throughout both cruises, and a lower-energy sub-bottom profiler will also be operated during most of both surveys. During the ADWBC study, coring of numerous sedimentary outcrops known to exist on the ridges will also take place. During both cruises, there will be additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The *R/V Maurice Ewing* will be used as the source vessel during the TAG cruise, and the *R/V Knorr* will be used as the source vessel during the ADWBC cruise. Both vessels will tow airgun arrays along predetermined lines, and will also serve as platforms from which vessel-based marine mammal observers will watch for marine mammals before and during airgun operations.

During TAG-study airgun operations, the vessel will travel at 7.4–9.3 km/hr (4–5 knots), and seismic pulses will be emitted at intervals of 60–90 seconds (OBS lines during the TAG cruise). The 60–90 sec. spacing along OBS lines is to minimize reverberation from previous shot noise during OBS data acquisition, and the exact spacing will depend on water depth. The airgun array to be used will consist of 20 2000–psi Bolt airguns, towed at a depth of 7.5 m (24.5 ft). The 20–gun array will include airguns ranging in chamber volume from 80 to 850 in^3, with a total volume of 8,575 in^3.

These airguns will be spaced in an approximate rectangle with dimensions of 35 m (115 ft) (across track) by 9 m (30 ft) (along track).

The ADWBC seismic survey will be high-resolution, consisting of two 105 in*3* GI airguns with a total volume of approximately 210 in*3*, spaced 7.8 m (26 ft) apart, and towed 37 m (121 ft) behind the vessel at a depth of 2–3 m (7–10 ft). Towing airguns at this shallow depth is accomplished by suspending the guns from floats, and the resulting short-period free surface "ghosting" keeps the spectral content broad with usable signals up to 300–350 Hz. These airguns produce an unusually clean impulse with sufficient energy to penetrate many hundreds of meters of sediment. Airgun firing, timing, and synchronizing is handled by a LDEO-built controller, which is integrated with a SUN workstation-based DGPS navigation, data logging, and fire control system. The air is produced by a standalone Price Co. 2000 psi compressor, and the seismic signals are detected by a solid state ITI hydrophone "Stealtharray", with 48 12.5–m (41 ft) long channels, and a total length of 600 m (1969 ft).

The dominant frequency components for both airgun arrays is 0 – 188 Hz. The 2–airgun array will have a peak sound source output level of 237 dB re 1 µPa or 243 dB peak-to-peak (P-P). The 20–airgun array will have a peak sound source output level of 255 dB re 1 µPa or 262 dB P-P. Because the actual source is a distributed sound source (2 or 20 airguns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level. Also, because of the downward directional nature of the sound from these airgun arrays, the effective source level for sound propagating in near-horizontal directions will be substantially lower.

Along with the airgun operations, several additional acoustical data acquisition systems will be operated during most or all of the cruises. The ocean floor will be mapped with an Atlas Hydrosweep DS–2 multi-beam 15.5–kHz bathymetric sonar, and/or a 3.5–kHz sub-bottom profiler. These mid-frequency sound sources are commonly operated from research vessels simultaneous with airgun arrays as well as in the absence of airgun activity.

The Atlas Hydrosweep sonar will be used during cruises by the *R/V Maurice Ewing*, is mounted in the hull of the vessel, and operates in three modes depending on the water depth. The first is a shallow-water mode when water depth is <400 m (1312.3 ft); source output is 210 dB re 1 µPa-m rms and a single 1–millisec (ms) pulse or "ping" per second is transmitted, with a beamwidth of 2.67 degrees fore-aft and 90 degrees in athwartship. The beamwidth is measured to the 3 dB point, as is usually quoted for sonars. The other two modes are deep-water modes: The Omni mode is identical to the shallow-water mode except that the source output is 220 dB rms (normally used only during start up). The Rotational Directional Transmission (RDT) mode is normally used during deep-water operation and has a 237 dB rms source output. In the RDT mode, each "ping" consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with tiny (<1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the "ping", including all 5 successive segments, varies with water depth but is 1 ms in water depths <500 m (1640.4 ft) and 10 ms in the deepest water. For each segment, ping duration is 1/5th of these values or 2/5th for a receiver in the overlap area ensonified by two beam segments. The "ping" interval during RDT operations depends on water depth and varies from once per second in <500 m (1640.5 ft) water depth to once per 15 seconds in the deepest water.

For the ADWBC cruise, the SeaBeam 2100/12 multibeam 12 kHz bathymetric sonar system will be used, with a source output of 237 dB re 1 µPa-m. Operation of this system is similar to that of the Atlas Hydrosweep (described above). The SeaBeam 2100/12 system has a swath width of about 3 times the water depth, so it will provide data over swaths 10–15 km (5–8 n.mi.) wide during most of the survey.

The sub-bottom profiler is normally operated to provide information about the sedimentary features and bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the vessel. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 sec. but a common mode of operation is to broadcast five pulses at 1–sec. intervals followed by a 5–sec. pause. The beamwidth is approximately 30° and is directed downward. Maximum source output is 204 dB re 1 µPa, 800 watts, while nominal source output is 200 dB re 1 µPa, 500 watts. Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

For the ADWBC cruise, the multibeam bathymetry and sub-bottom profiling will be used to define windows where erosion or non-deposition has exposed deeper sequences suitable for piston coring. Coring transects across these windows will provide biostratigraphic age determinations that can be used to constrain the age of reflections throughout the study area. There will be five days of piston coring following completion of the ADWBC seismic survey.

Additional information on the airgun arrays, bathymetric sonars, and sub-bottom profiler specifications is contained in the application, which is available upon request (*see* **ADDRESSES**).

Comments and Responses

A notice of receipt of LDEO's application for seismic work in the Mid-Atlantic Ocean and proposed IHA was published in the **Federal Register** on September 17, 2003 (68 FR 54421). That notice described in detail the proposed activity and the marine mammal species that may be affected by it. That information is not repeated here. During the 30–day public comment period, comments were received from the Marine Mammal Commission (Commission).

Comment 1: The Commission believes that NMFS' preliminary determinations are reasonable, provided NMFS is satisfied that the proposed mitigation and monitoring activities are adequate to detect marine mammals in the vicinity of the proposed operations and to ensure that marine mammals are not being taken in unanticipated ways or numbers. In this regard, NMFS' **Federal Register** notice and the application state that "[v]essel-based observers will monitor marine mammals near the seismic source vessel during all daylight airgun operations and during any nighttime startups of the airguns..." The probability of detecting marine mammals about to enter or already inside the presumed safety limits is probably close to zero at night. Observers will generally not be on duty, and bridge personnel will have limited time to search for marine mammals. The current **Federal Register** notice states that "[a]n image-intensifier night-vision device (NVD) will be available for use at night," but previous **Federal Register** notices have stated that "past experience has shown that NVDs are of limited value for this purpose." There is no discussion of why nighttime operations are considered necessary, why experienced marine mammal

observers will not be on duty during nighttime hours, or how effective the observation efforts are expected to be. The efficacy of visual monitoring is not clear and may be inadequate during some of the times that airguns would be in use. The Commission notes that NMFS has previously estimated in a **Federal Register** notice dated March 19, 2001, that visual observation efforts were expected to detect about 5 percent of animals inside safety limits (66 FR 15380). Although the efficacy of visual observations will be determined by many factors (*e.g.*, species in the area, daylight, sea surface conditions, observer position), it is feasible that many, if not most, marine mammals go undetected based on visual observations alone. If information is available regarding the efficacy of visual monitoring from the vessel to be used, then that information should be provided to justify NMFS' confidence that the proposed monitoring program will be adequate. If no information is available to assess efficacy, then NMFS should seek alternative means of ensuring that adequate monitoring methods are used, or conduct research to evaluate their adequacy. In addition, the Commission notes that it is unclear whether vessel-based passive acoustic monitoring will be conducted as an adjunct to visual monitoring during the daytime and particularly at night to detect, locate, and identify marine mammals and, if not, why not.

Response: Nighttime operations are necessary due to cost considerations. The daily cost to the federal government to operate vessels such as the *Ewing* and the *Knorr* is approximately $33,000 to $35,000/day (Ljunngren, pers. comm. May 28, 2003), or approximately $910,000 for a total of 26 days of research during both Mid-Atlantic cruises. If the vessels were prohibited from operating during nighttime, it is possible that each trip would require an additional three to five days, or up to $105,000 to $175,000 more, depending on average daylight at the time of work.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including mitigation and monitoring), NMFS has determined that the mitigation required by the IHA ensures that the activity will have the least practicable impact on the affected species or stocks. In summary, marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns (at least one hour in advance), thereby giving them an opportunity to avoid the approaching array; if ramp-up is required after an extended power-down, two marine mammal observers will be required to monitor the safety radii using night vision devices for 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible; and ramp-up may occur at night only if one airgun with a sound pressure level of at least 180 dB has been maintained during interruption of seismic activity. Therefore, it is likely that the 20–gun array will not be ramped-up from a shut-down at night. *See* Mitigation and Monitoring for more details.

It is also noted that at times, pinnipeds and even some small cetaceans will approach a vessel during transmissions (the vessel itself moving forward at about 3–5 knots) from the side of the vessel or the stern, meaning that the animal is voluntarily approaching a noise source that is increasing in strength as the animal gets closer. Experience indicates that pinnipeds will come from great distances to scrutinize seismic-reflection operations. Seals have been observed swimming within airgun bubbles only 10 m (33 ft) away from active arrays. Also, Canadian scientists, who were using a high-frequency seismic system that produced sound frequencies closer to pinniped hearing than those used by the *Ewing*, describe how seals frequently approached close to the seismic source, presumably out of curiosity. Therefore, NMFS has concluded that this mitigation requirement is reasonable because the bridge-watch will be concentrating on marine mammals approaching the vessel from the bow. Also, the night-vision ability of the trained bridge-watch staff will be better than observers elsewhere on the vessel where normal ship-board lighting is more likely. Finally, an observer is still required to be on standby, meaning he or she will be in the vicinity of the bridge and is not precluded from conducting observations during night-time.

The methodology for visual observations was changed since the 5 percent estimate (noted by the Commission above), resulting in a revised estimate of 9 percent efficacy (67 FR 46712, July 16, 2002). That figure includes both daytime and nighttime periods of observation. The rate increases to 18 percent based only on daytime monitoring. However, NMFS shipboard marine mammal assessment surveys estimate a higher rate of efficacy. It should be understood that these efficacy ratings were based on most difficult marine mammals to sight, such as harbor porpoise and Cuvier's beaked whales, and not those more easily sighted.

Passive means of monitoring was found to be 25 percent effective. However, shipboard passive acoustics do not allow scientists to determine a marine mammal's distance from the vessel through triangulation; the vessel operator could determine only that a marine mammal is some unknown distance from the vessel. In order to triangulate on the animal, a system similar to that used in the Gulf of Mexico (GOM) Sperm Whale Seismic Study (SWSS) in May, 2003 would be needed. The passive acoustical monitoring equipment that was used onboard the *Ewing* during the GOM SWSS is not the property of LDEO or the *Ewing*, and therefore is not available for the Mid-Atlantic cruises. LDEO is presently evaluating the scientific results of the passive sonar from the SWSS trip to determine whether it is practical to incorporate it into future seismic research cruises. NMFS expects a report on this analysis shortly.

Finally, NMFS notes that the monitoring methods employed on the *Ewing* are standard methods used onboard vessels for conducting marine mammal abundance surveys and under IHA's. NMFS would welcome the Commission's participation in its annual workshop in Seattle, WA to discuss similar monitoring methodology used in oil exploration and production, including vessel seismic operations, in Arctic waters or in another venue. NMFS is especially interested in exploring with the Commission the potential for alternative, practical, monitoring methodology for use in waters too far from shore-side facilities to make aircraft surveillance practical. Recently, LDEO submitted its required monitoring report for the IHAs issued for the *Ewing's* seismic work in the Gulf of Mexico (68 FR 32460, May 30, 2003) and Hess Deep (68 FR 41314, July 11, 2003). Copies of those documents are available upon request (*see* **ADDRESSES**).

Comment 2: Several species of cetaceans for which LDEO is seeking incidental take authority stay submerged on most dives for more than 30 minutes. The Commission questions whether conducting monitoring "for at least 30 minutes prior to the planned start of airgun operations" during the day and at night is sufficient to detect those species.

Response: NMFS believes that a 30–minute pre-ramp-up monitoring period is sufficient considering that the ramp-up period will increase SPLs at a rate no greater than 6 dB per 5–minutes for a ramp-up duration of approximately 25 min for the 20–gun array and a total

monitoring period of approximately 55 minutes. Also, while some whale species may dive for up to 45 minutes, it is unlikely that the ship's bridge watch would miss a large whale surfacing from its previous dive if it is within a mile or two of the vessel.

Comment 3: The **Federal Register** notice for the proposed IHA and the applicant's request notes that there are several species of beaked whales in the proposed survey area, but the notice makes no reference to or requirement for any additional caution with respect to beaked whales or that post-survey monitoring be conducted to search for animals that may have been taken other than by harassment.

Response: While NMFS shares the Commission's concern regarding the possible relationship between low-frequency seismic survey transmissions and the beaked whale strandings in the Gulf of California, NMFS believes that additional factors probably also influence whether beaked whales will be affected in ways other than the expected reaction of vacating the immediate vicinity of the noise, similar to the reactions of other marine mammal species. For example, beaked whales in the Gulf of Mexico have been exposed to seismic noise for several decades, yet mass stranding events do not appear in the stranding record. Finally, post-survey monitoring is not being required under this IHA because it is neither practical given the location (mid-ocean) and vessel commitments, nor warranted given the unlikelihood (based on the 2000 Bahamas stranding event) that beaked whales will show distress at the ocean surface. However, NMFS welcomes recommendations regarding additional practical mitigation measures to protect beaked whales from anthropogenic sounds.

Mitigation

For the TAG seismic survey, LDEO will use a 20–gun array with a total volume of 8575 in^3. Individual airguns will range in size from 80 to 850 in3. For the ADWBC cruise, LDEO will use 2 GI-guns with a total volume of 210 in^3. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward.

The sound pressure fields were modeled by LDEO in relation to distance and direction from the 2 GI-guns and the 20–gun array, as shown in Figures 5 and 6 of the application (LDEO Mid-Atlantic, 2003). The radii around the arrays where the received level would be 180–dB re 1 µPa (rms) (NMFS' threshold level for onset of Level A harassment applicable to cetaceans) were estimated as 54 m (177 ft) and 900 m (2953 ft), respectively, for the 2–GI and 20–gun array. The radii around the 2 GI-guns and the 20–gun array where the received level would be 190 dB re 1 µPa (rms), (NMFS' threshold level for onset of Level A harassment applicable to pinnipeds), were estimated as 17 m (56 ft) and 275 m (902 ft), respectively. A calibration study was conducted prior to these surveys to determine the actual radii corresponding to each sound level. These actual radii will be used to define the safety radii to be used for this study. Until then, or if those measurements appear defective, LDEO will use a precautionary 1.5 times the modeled 180- (cetaceans) and 190- (pinnipeds) dB radii as the safety radii.

Vessel-based observers will monitor marine mammals in the vicinity of the arrays. LDEO will power-down the airguns if marine mammals are observed approaching or within the safety radii. LDEO will employ a ramp-up procedure when commencing operations using the 20–gun array. Ramp-up will begin with the smallest gun in the array (80 in^3), and guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5–minute period over a total duration of about 25 minutes. Ramp-up will not occur for the 2–GI gun array because the total air discharge volume is small (210 in^3). Please refer to LDEO's application for more detailed information. The directional nature of the 20–airgun array to be used in this project is an important mitigating factor, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source (2 or 20 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

Marine Mammal Monitoring

At least two vessel-based observers will be stationed aboard LDEO's seismic survey vessel during seismic operations in the Mid-Atlantic Ocean. One or two marine mammal observers aboard the seismic vessel will search for and observe marine mammals whenever seismic operations are in progress during daylight hours, and if feasible, during periods without seismic activity. Vessel-based observers will monitor for marine mammals near and in the safety radii for at least 30 minutes prior to and during all daylight ramp-up and airgun operations, and during any nighttime startups of the airguns. Airgun operations will be suspended when marine mammals are observed within, or about to enter, the designated safety radii. Observers will not be required to be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this period and will call for the airguns to be powered down if marine mammals are observed in or about to enter the safety radii. At least one marine mammal observer will be on "standby" at night, in case bridge personnel see a marine mammal. An image-intensifier night-vision device (NVD) will be available for use at night. If the airguns are started up at night, two marine mammal observers will monitor for marine mammals near the source vessel for 30 minutes prior to start up using NVDs. The 30–minute observation period is only required prior to commencing seismic operations following an extended shut down period (*see* Ramp-up Procedures below). After 30 minutes of observation, the ramp-up procedure will be followed.

The observers will watch for marine mammals from the highest practical vantage point on the vessel, which is either the flying bridge or the bridge. On the *R/V Maurice Ewing*, the observer's eye level will be approximately 11 m (36 ft) above sea level when stationed on the bridge, allowing for good visibility within a 210° arc. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The proposed monitoring plan is summarized later in this document.

Mitigation During Operations

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the proposed Mid-Atlantic seismic surveys, provided that doing so will not compromise operational safety requirements: (1) Speed or course alteration; (2) Power-down procedures; (3) Shut-down procedures; and (4) Ramp-up procedures.

Course Alteration

If a marine mammal is detected outside the appropriate safety radius and, based on its position and the relative bearing, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach or enter the safety radius. If the mammal appears likely to enter the safety radius,

further mitigative actions will be taken, *i.e.*, either further course alterations or shutdown of the airguns.

Power-down and Shut-down Procedures

Received sound levels have been modeled for the 2–GI and 20–gun arrays. Based on the modeling, estimates of the 190- and 180–dB re 1 μPa (rms) distances (safety radii) for these arrays have been provided previously in this document.

Airgun operations will be powered- or shut-down immediately when cetaceans or pinnipeds are seen within or about to enter the appropriate 180–dB (rms) or 190–dB (rms) radius, respectively. These 180- and 190–dB criteria are consistent with guidelines listed for cetaceans and pinnipeds by NMFS (2000) and other guidance by NMFS. If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be powered-down before the mammal is within the safety radius. If a mammal is already within the safety radius when first detected, the airguns will be powered-down immediately. If a marine mammal is seen within the appropriate safety radius of the array while the guns are powered-down, airgun operations will be shut-down. For the power-down procedure for the 20–gun array, one 80 in3 airgun will be operated during the interruption of seismic survey. When the 2 GI-guns are in use, a shut-down rather than a power-down will likely be necessary. Airgun activity (after both power-down and shut-down procedures) will not resume until the marine mammal has cleared the safety radius. The animal has cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the zone for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked, and bottlenose whales).

Ramp-up Procedure

A "ramp-up" procedure will be followed when the airgun arrays begin operating after a specified duration without airgun operations. Under normal operational conditions (vessel speed 4 knots, or 7.4 km/hr), a ramp-up would be required after a power-down or shut-down period lasting about 8 minutes or longer if the *Ewing* was towing the 20–gun array. At 4 knots, the source vessel would travel 900 m (2953 ft) during an 8–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, a ramp-up would be required after a "no shooting" period lasting 10 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 900 m (3117 ft) in 10 minutes. Based on the same calculation, a ramp-up procedure would be required after a 6 minute period if the speed of the source vessel was 5 knots. During the ramp-up procedures, the safety radii for the full gun array will be maintained.

Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. If the safety radius has not been visible for that 30 minute period (*e.g.*, during darkness or fog), ramp-up will not commence unless one airgun with a sound pressure level (SPL) of at least 180 dB has been maintained during the interruption of seismic activity. Therefore, it is likely that the 20–gun array will not be ramped up from a shut-down at night or in thick fog, since the safety radii for this array will not be visible during those conditions.

Monitoring and Reporting

LDEO will conduct marine mammal monitoring of its Mid-Atlantic seismic programs in order to verify that the taking of marine mammals, by harassment, incidental to conducting the seismic survey will have a negligible impact on marine mammal stocks and to ensure that these harassment takings are at the lowest level practicable.

Vessel-based Visual Monitoring

The observer(s) will systematically scan the area around the vessel with reticle binoculars (*e.g.*, 7 X 50 Fujinon) and with the naked eye during the daytime. At night, NVDs will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent). Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation.

At least two observers will be based aboard the vessel, and at least one will be an experienced marine mammal observer. Observers will be appointed by LDEO with NMFS concurrence. Observers will be on duty in shifts of duration no longer than 4 hours. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected. LDEO bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night, when designated observers will not be on duty. If ramp-up procedures must be performed at night, two observers will be on duty 30 minutes prior to the start of airgun operations and during the subsequent ramp-up procedures. Ramp-up is not required for the 2 GI gun array, but observers must watch for 30 minutes prior to operation of the 2 GI-guns and the safety radii must be visible.

Reporting

When a mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (*e.g.*, none, avoidance, approach, paralleling, *etc.*), and behavioral pace; and (2) time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare. The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and airgun power- and shut-downs will be recorded in a standardized format. Data will be entered into a custom database using a laptop computer when observers are off-duty. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical or other programs for further processing and archiving.

A report will be submitted to NMFS within 90 days after the end of each cruise in the Mid-Atlantic Ocean. The end of the TAG cruise is predicted to occur on or about November 7, 2003. The end of the ADWBC cruise is predicted to occur during August 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The 90–day report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey

activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways. The draft report will be considered the final report unless comments and suggestions are provided by NMFS within 60 days of its receipt of the draft report.

Estimates of Take by Harassment for the Mid-Atlantic Cruises

As described previously (*see* 68 FR 17909, April 14, 2003) and in the LDEO application, animals subjected to sound levels ≥160 dB may alter their behavior or distribution, and therefore might be considered to be taken by Level B harassment.

The estimates of takes by harassment are based on the number of marine mammals that may be exposed to seismic sounds ≥160 dB re 1 µPa (rms) by operations with the 20–airgun array and the 2 GI-guns, during the TAG and ADWBC cruises, respectively. Based on marine mammal density sightings and effort data collected during a survey of offshore waters northeast of the Azores by Lens (1991), LDEO used their estimates of marine mammal density to compute the best (and maximum) estimates of the number of marine mammals that may be exposed to received levels ≥160–dB re 1 µPa (rms) (NMFS' current criterion for onset of Level B harassment). The best estimates of densities were then multiplied by the linear extent of the proposed survey effort and by twice the 160–dB radius around the applicable airgun array. The proposed survey effort is 185 km (100 n.mi.) for the TAG cruise, and 4329 km (2340 n.mi.) for the ADWBC cruise. The 160–dB radius for the TAG cruise (20–gun array) is 9000 m (29,529 ft), whereas that for the ADWBC cruise (2 GI-guns) is 510 m (1673 ft). For large cetaceans, LDEO used 0.5x the densities seen during the Lens (1991) survey to calculate the numbers that might be exposed to seismic sounds, but even this reduced number is likely a high estimate, because the proposed survey areas are likely less productive, so feeding aggregations similar to those seen by Lens (1991) are not likely to be seen. In particular, the two areas where the proposed surveys will be conducted are farther offshore and likely in less productive waters than the area surveys northeast of the Azores (Lens 1991). Thus, densities are likely to be much lower in the two survey areas than in the Lens (1991) survey area.

Based on this method, tables 3 and 4 of LDEO's application give the best estimates, as well as maximum estimates, of densities for each species or species group of cetacean in the two seismic survey areas during the TAG and ADWBC cruises, respectively, that might be exposed to received levels ≥160 dB re 1 µPa (rms), and thus potentially taken by Level B harassment, during seismic surveys in the proposed study areas of the Mid-Atlantic Ocean. During the TAG cruise, 38 of the marine mammals exposed to sounds ≥160 dB re 1 µPa (rms) would be endangered species, primarily fin (18) and sperm whales (15). During the ADWBC cruise, 49 of the marine mammals exposed to sounds ≥160 dB re 1 µPa (rms) would be endangered species, primarily fin (24) and sperm whales (20). During both research cruises, Delphinidae would account for 92 percent of the overall estimate for potential taking by harassment during each of the two seismic surveys (*i.e.*, 709 of 772 (TAG) and 943 of 1028 (ADWBC)). While there is no agreement regarding any alternative to the 160–dB "take" criterion for dolphins exposed to airgun pulses, if only those dolphins exposed to ≥170 dB re 1 µPa (rms) were considered taken by Level B harassment, then the best estimate for common dolphins (the most abundant dolphin in the area) would be 91 rather than 316 during the TAG cruise, and 144 rather than 419 during the ADWBC cruise. These are based on the predicted 170–dB radius around the 20– and 2–airgun arrays (2600 and 175 m (8530 and 574 ft), respectively), and are considered to be more realistic estimates of the number of each species of delphinid that may be harassed, given their apparently higher tolerance of low frequency sound. Therefore, the total number of animals likely to be harassed is considerably lower than the estimated 772 (TAG cruise) animals or 1028 (ADWBC cruise) animals.

Conclusions

Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6 to 8 km (3.2 to 4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel. Some bowhead whales in Arctic waters avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. There are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment." Reactions by mysticetes are expected to involve small numbers of individual cetaceans because few mysticetes occur in the area where seismic surveys are proposed. For Bryde's whales, LDEO's best estimate is that 1 animal during each of the cruises, which translates to 3 percent of the North Atlantic population for this species in the area of the TAG survey, and 1.5 percent of the North Atlantic population for this species in the area of the ADWBC survey, has the potential to be exposed to sound levels ≥160 dB re 1 µPa (rms) and potentially affected. LDEO's best estimate is that 18 (TAG) and 24 (ADWBC) fin whales, both of which are <0.1 percent of the estimated North Atlantic fin whale population (IWC 2003), will be exposed to sound levels ≥160 dB re 1 µPa (rms) and potentially affected. Similarly, only 15 (TAG) and 20 (ADWBC) sperm whales, or approximately 0.1 and 0.2 percent of the estimated North Atlantic sperm whale population, would receive seismic sounds ≥160 dB. Therefore, based on the relatively low numbers of marine mammals that will be exposed at levels ≤160 dB and the expected impacts at these levels, NMFS has determined that this action will have a negligible impact on the affected species or stocks.

Larger numbers of odontocetes may be affected by the seismic activities, but the populations sizes of most of the species are large and the numbers potentially affected are small relative to the population sizes. The best estimate of the total number of odontocetes that might be exposed to ≥160 dB re 1 µPa (rms) in the proposed survey areas in the Mid-Atlantic Ocean is 746 for the TAG cruise, and 991 for the ADWBC cruise. Of these, 709 (TAG cruise) and 943 (ADWBC cruise) are Delphinidae, and of these about 204 (TAG cruise) and 322 (ADWBC cruise) might be exposed to ≥170 dB. Approximately 316 and 419 common dolphins (the most abundant delphinid in the proposed survey areas) are expected to be exposed to seismic sounds ≥160 dB in the TAG and

ADWBC seismic survey areas, respectively. These figures represent considerably less than 0.2 and 0.3 percent of the North Atlantic population of common dolphins, respectively. Of these, 91 and 144, respectively, might be exposed to ≥170 dB. These figures are much less than 0.1 percent of the North Atlantic population and the 170–dB values (91 and 144) are believed to be a more accurate estimate of the number potentially affected. Smaller numbers of other species of dolphins will be exposed to seismic sounds ≥160 dB during the surveys, and the numbers for each species represent considerably less than 0.1 to 0.7 percent of each population. The numbers that might be exposed to ≥170 dB are even smaller and represent considerably less than 0.1 to 0.2 percent of each population; these latter percentages are believed to be a more accurate estimate of the numbers potentially affected. Based on the relatively low numbers of marine mammals that will be exposed at levels ≥160 dB and the expected impacts at these levels, NMFS has determined that this action will have a negligible impact on the affected species or stocks.

Altogether, the mitigation measures explained in this document (*See* Mitigation) will reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Effects on Pinnipeds

Very few if any pinnipeds are expected to be encountered during the proposed seismic surveys in the Mid-Atlantic Ocean. Most have a coastal distribution or are distributed along the pack-ice edge. Therefore, it is unlikely that pinnipeds will be encountered in either study area. However, if pinnipeds are encountered, they are more likely to be seen during the ADWBC cruise in the northern Mid-Atlantic than during the TAG cruise. A few gray seals, which are normally found in coastal areas might be seen during the ADWBC cruise. In addition, a few vagrant harbor seals, harp seals, or hooded seals might be encountered. None of the pinniped species is endangered or depleted.

Because no seismic surveys will take place in coastal and nearshore areas, the best estimate of the numbers of each of the more common (but still unlikely) species that might be taken by Level B harassment is no more than 2 and is most likely 0. For the other less-common species the best estimate is zero. If pinnipeds are encountered, the proposed seismic activities would have, at most, a short-term effect on their behavior and no long-term impacts on individual seals or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. Therefore, based on these effects and the relatively low numbers of pinniped species that may be exposed, NMFS has determined that this action will have a negligible impact on the affected species or stocks.

Determinations

Based on the information contained in the LDEO application, the NSF EA, the September 17, 2003, proposed authorization notice (68 FR 54421) and this document, NMFS has determined that conducting two marine seismic surveys, one each by the *Ewing* and the *Knorr*, in the Mid-Atlantic Ocean by LDEO would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal species or stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses. This activity will result, at worst, in a temporary modification in behavior by affected species of marine mammals. While behavioral modifications may be made by these species as a result of seismic survey activities, this behavioral change is expected to result n no more than a negligible impact on the affected species. Also, while the number of actual incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document and required under the IHA. For these reasons therefore, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Endangered Species Act (ESA)

NMFS has concluded consultation under section 7 of the ESA on NMFS' issuance of an IHA to take small numbers of marine mammals, by harassment, incidental to conducting two oceanographic seismic surveys in the Mid-Atlantic Ocean by LDEO. The consultation concluded with a biological opinion that this action is not likely to jeopardize the continued existence of marine species listed as threatened or endangered under the ESA. No critical habitat has been designated for these species in the equatorial Pacific Ocean; therefore, none will be affected. A copy of the Biological Opinion is available upon request (*see* **ADDRESSES**).

National Environmental Policy Act (NEPA)

On July 30, 2003, the NSF made a determination, based on information contained within its Environmental Assessment (EA), that implementation of the subject action is not a major Federal action having significant effects on the environment within the meaning of Executive Order 12114. NSF determined therefore, that an environmental impact statement would not be prepared. On September 17, 2003 (68 FR 54421), NMFS noted that the NSF had prepared an EA for the Mid-Atlantic surveys and made it available upon request. In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has reviewed the information contained in NSF's EA and determined that the NSF EA accurately and completely describes the proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. As a result, NMFS has determined that it is not necessary to issue either a new EA, supplemental EA or an environmental impact statement for the issuance of an IHA to LDEO for this activity. Therefore, based on this review and analysis, NMFS is adopting the NSF EA under 40 CFR 1506.3. A copy of the NSF EA for this activity is available upon request (*see* **ADDRESSES**).

Authorization

NMFS has issued an IHA to take small numbers of marine mammals, by harassment, incidental to conducting two marine seismic surveys, one by the Ewing and one by the Knorr, in the Mid-Atlantic Ocean to LDEO for a 1–year period, provided the mitigation, monitoring, and reporting requirements described in this document and the IHA are undertaken.

Dated:October 23, 2003.

Phil Williams,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–28129 Filed 11–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110403B]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council's (Council) Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BSAI) groundfish plan teams will meet in Seattle.

DATES: The meetings will be held on November 17–21, 2003. The meetings will begin at 1 pm on Monday, November 17, and continue through Friday November 21.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Bldg. 4, Room 2039 (BSAI Plan Team) and Room 2076 (GOA Plan Team), Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Diana Stram, North Pacific Fishery Management Council; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: Agenda: Council Action updates: Non-target Species management, general issues, review Plan Team terms of reference, Economic Stock Assessment Fishery Evaluation (SAFE) report, Ecosystem chapter, GOA and BSAI Groundfish Stock Assessments and Proposed Specifications for 2004.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: November 4, 2003.

Peter H. Fricke,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–28132 Filed 11–7–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

November 4, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Colombia and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

These limits do not apply to goods entered under the Andean Trade Promotion and Drug Eradication Act (ATPDEA. Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. See 67 FR 67283, published on November 5, 2002.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III.

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following restraint limits:

Category	Twelve-month restraint limit
315	43,853,164 square meters.
443	142,251 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated December 3, 2002. to the extent of any unfilled balances. In the event

the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Andean Trade Promotion and Drug Eradication Act (ATPDEA. Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. See directive dated October 31, 2002.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–28171 Filed 11–7–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

November 4, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Costa Rica and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish limits and guaranteed access levels for 2004.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	1,937,554 dozen.
342/642	715,260 dozen.
347/348	3,265,210 dozen.
443	239,454 numbers.
447	12,910 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated October 10, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), you are directed to establish guaranteed access levels for properly certified cotton, wool and man-made fiber textile products in the following categories which are assembled in Costa Rica from fabric formed and cut in the United States and re-exported to the United States from Costa Rica during the period beginning on January 1, 2004 and extending through December 31, 2004:

Category	Guaranteed access level
340/640	650,000 dozen.
342/642	250,000 dozen.
347/348	1,500,000 dozen.
443	200,000 numbers.
447	4,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of May 15, 1990 (55 FR 21074), as amended, shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–28172 Filed 11–7–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit and Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

November 4, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing an import limit and guaranteed access level.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limit and Guaranteed Access Level (GAL) for textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the limit and guaranteed access level for 2004.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

This specific limit and guaranteed access level do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of 2,077,360 dozen.

The limit set forth above is subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in Categories 340/640 exported during 2003 shall be charged to the applicable category limit for that year (see directive dated October 18, 2002) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2004, a guaranteed access level of 1,000,000 dozen is being established for properly certified textile products in Categories 340/640 assembled in El Salvador from fabric formed and cut in the United States which are re-exported to the United States from El Salvador during the period beginning on January 1, 2004 and extending through December 31, 2004.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of January 6, 1995 (60 FR 2740), as amended, shall be denied entry unless the Government of El Salvador authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

This specific limit and guaranteed access level do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–28173 Filed 11–7–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 9, 2004.

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, Regulatory Information Management

Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 4, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision of a currently approved collection.

Title: America's Career Resource Network State Grant Annual Performance Report.

Frequency: Semi-Annually; Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 59.

Burden Hours: 708.

Abstract: Section 118(e) of the Carl D. Perkins Vocational and Technical Education Act requires the Department of Education to report annually to Congress concerning activities carried out by States with grant funds awarded under section 118. This collection solicits information from grantees necessary to fulfill this requirement, as well as to support the Department's monitoring and technical assistance activities.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2371. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. 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 Shelia Carey at her e-mail address *Shelia.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–28151 Filed 11–7–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Reopening the Deadline Dates for the Transmittal of Applications for Certain Direct Grants

SUMMARY: The Secretary reopens the deadline dates for the transmittal of applications for several competitions. All of the affected competitions are among those under which the Secretary is making new awards for fiscal year (FY) 2004. The Secretary takes this action to allow more time for the preparation and transmittal of applications by potential applicants from counties designated as Federal disaster areas due to the California wildfires. The reopening of these deadline dates is intended to help the potential applicants compete fairly with other applicants under these programs.

Eligibility: The reopened deadline dates in this notice apply to you if you are a potential applicant from a county on the following list. The President has declared a major disaster for the following counties in California as a result of recent wildfires.

County: Los Angeles, Riverside, San Bernardino, San Diego, and Ventura.

DATES: The new deadline date for transmittal of applications under each competition is listed with that competition.

If the program in which you are interested is subject to Executive Order 12372, the deadline date for intergovernmental review remains as originally posted.

ADDRESSES: The address and telephone number for obtaining applications for, or information about, an individual program are in the original application notice for that program. We have listed the publication date and **Federal Register** citation of the original application notice for each program.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number, if any, listed in the individual application notice. If we have not listed a TDD number, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Two of the affected programs are under the Rehabilitation Services Administration of the Office of Special Education and Rehabilitative Services, and five are under the Office of Postsecondary Education, including the Fund for the Improvement of Postsecondary Education (FIPSE) Comprehensive Program. You can find information related to each of these programs under the "List of Programs Affected" in this notice.

The following chart provides specific information about each of the programs or competitions covered by this notice:

LIST OF PROGRAMS AFFECTED

CFDA No. and Name	Publication date and **Federal Register** cite	Original deadline date for applications	Revised deadline date for applications
Rehabilitation Services Administration/Office of Special Education and Rehabilitative Services			
84.129C/E/F/P/Q/R—Rehabilitation Training: Rehabilitation Long-Term Training	8/26/03 (68 FR 51263).	10/27/03	11/14/03
84.129B—Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling.	9/17/03 (68 FR 54434).	10/31/03	11/14/03
Office of Postsecondary and Education			

LIST OF PROGRAMS AFFECTED—Continued

CFDA No. and Name	Publication date and Federal Register cite	Original deadline date for applications	Revised deadline date for applications
84.017A—International Research and Studies Program	8/26/03 (68 FR 51261).	11/3/03	11/14/03
84.116A—FIPSE Comprehensive Program	9/18/03 (68 FR 54719).	11/3/03	11/14/03
84.016A—Undergraduate International Studies and Foreign Language Program	9/11/03 (68 FR 53601).	11/5/03	11/14/03
84.153A—Business and International Education Program	8/27/03 (68 FR 51566).	11/7/03	11/14/03
84.200A—Graduate Assistance in Areas of National Need (GAANN) Program	8/12/03 (68 FR 47915).	11/7/03	11/14/03

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 person listed in the individual application notices.

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.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoacess.gov/nara/index.html.*

Dated: November 4, 2003.

Jack Martin,

Chief Financial Officer.

[FR Doc. 03–28177 Filed 11–7–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Energy 2001, Inc.; Notice of Surrender of Preliminary Permit

November 3, 2003.

Take notice that Energy 2001, Inc., permittee for the proposed Lake Clementine Project, has requested that its preliminary permit be terminated. The permit was issued on May 23, 2001, and would have expired on April 30, 2004. The project would have been located on the North Fork American River in Placer County, California.

The permittee filed the request on September 24, 2003. The preliminary permit for Project No. 11868 shall remain in effect through the thirtieth day after issuance of this notice, unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00184 Filed 11–07–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–9–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Request Under Blanket Authorization

November 3, 2003.

Take notice that on October 24, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream), 2701 North Rocky Point Drive, Suite 1050, Tampa, Florida, filed a request pursuant to sections 157.205, 157.208(b)(2) and 157.211(a)(2) of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Act (NGA), as amended, and blanket certificate authority granted February 22, 2001 in Docket No. CP00–008–000, 94 FERC ¶ 61,185 for authorization to construct, own and operate 5.4 miles of 30-inch pipeline (Martin connector) to a power plant in Martin County, Florida, all as more fully set forth in the request, which is on file with the Commission, and open for public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

Any questions regarding the application may be directed to P. Martin Teague, Assistant General Counsel, Gulfstream Natural Gas System, L.L.C., 2701 Rocky Point Drive, Tampa, Florida 33607, at (813) 282–6609, or *pmteague@duke-energy.com.*

Any person or the Commission's staff may, within 45 day after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment date: December 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00187 Filed 11–07–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–7–000, et al.]

Enron Wind LLC, et al.; Electric Rate and Corporate Filings

October 31, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Enron Wind LLC, Victory Garden Power Partners I LLC, Cabazon Power Partners LLC, ZWHC LLC, Green Power Partners I LLC, Sky River LLC, Victory Garden LLC; and FPL Energy Sky River Wind, LLC, FPL Energy Green Power Wind, LLC, FPL Energy VG Repower Wind, LLC, FPL Energy VG Wind, LLC, FPL Energy 251 Wind, LLC, FPL Energy Cabazon Wind, LLC

[Docket No. EC04–7–000]

Take notice that on October 24, 2003, Enron Wind LLC (Enron Wind), on behalf of itself and certain affiliates, Victory Garden Power Partners I LLC, Cabazon Power Partners LLC, ZWHC LLC, Green Power Partners I LLC, Sky River LLC, and Victory Garden LLC (collectively, the Sellers) and FPL Energy Sky River Wind, LLC, FPL Energy VG Wind, LLC, FPL Energy Cabazon Wind, LLC, FPL Energy Green Power Wind, LLC, FPL Energy VG Repower Wind, LLC, and FPL Energy 251 Wind, LLC (collectively, the Purchasers) filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization of the sale by the Sellers to the Purchasers (all wholly-owned subsidiaries of FPL Energy, LLC) of: (1) Generation assets owned by four wind power project companies (one of which is an indirect wholly-owned subsidiary of Enron Wind and three of which are held in trust for the benefit of the creditors of Enron Wind Systems, LLC, Enron Wind Development LLC, and Enron Wind); and (2) the sale of a 50% interest in two project partnerships (Sky River Partnership and Victory Garden Phase IV Partnership), which 50% interests are indirectly owned by a trust established for the benefit of Enron Wind Systems, LLC and Enron Wind. The application requests approval by December 15, 2003.

Comment Date: November 14, 2003.

2. El Paso Merchant Energy, L.P. and Duke Energy Trading and Marketing, L.L.C.

[Docket No. EC04–8–000]

Take notice that on October 27, 2003, El Paso Merchant Energy, L.P. (EPME), and Duke Energy Trading and Marketing, L.L.C. (DETM) (jointly, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization for EPME to assign its rights and obligations under a capacity supply agreement to DETM. Applicants also requested expedited consideration of the Application and privileged treatment for certain exhibits pursuant to 18 CFR 33.9 and 388.112.

Comment Date: November 17, 2003.

3. SOWEGA Power LLC

[Docket No. ER99–3427–003]

Take notice that on October 27, 2003, SOWEGA Power LLC (SOWEGA) tendered for filing supplemental information to its application filed on September 17, 2003 pursuant to 18 CFR 33 and Section 203 of the Federal Power Act.

Comment Date: November 6, 2003.

4. Mid-Power Service Corporation

[Docket No. ER97–4257–011]

Take notice that on October 16, 2003, Mid-Power Service Corporation submitted for filing it Triennial Revised Market Analyses for period ending September 30, 2003 in compliance with Commission's Order dated September 30, 1997.

Comment Date: November 12, 2003.

5. GEN–SYS Energy

[Docket No. ER97–4335–006]

Take notice that on October 17, 2003, GEN–SYS Energy (GEN–SYS) submitted for filing a triennial updated market power analysis in compliance with Commission's Order issued October 17, 1997 in Docket No. ER97–4335–000, 18 FERC ¶ 61,045.

Comment Date: November 12, 2003.

6. Griffith Energy LLC

[Docket No. ER00–3696–002]

Take notice that on October 27, 2003, Griffith Energy LLC filed with the Federal Energy Regulatory Commission an updated market power analysis pursuant to the Commission's Order in Griffith Energy LLC, Docket No. ER00–3696–000 issued October 25, 2000.

Griffith Energy LLC states it has served a copy of this filing on the parties on the Commission's official service list for this docket.

Comment Date: November 17, 2003.

7. Central Hudson Gas & Electric Corporation

[Docket No. ER03–1129–001]

Take notice that on October 27, 2003, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing a compliance filing pursuant to the Order issued on September 26, 2003 in ER03–1129–000. Central Hudson submitted a paginated tariff sheet consistent with Order No. 614.

Comment Date: November 17, 2003.

8. Stalwart Power Company

[Docket No. ER03–1352–001]

Take notice that on October 27, 2003, Stalwart Power Company submitted a Notice of Cancellation, FERC Electric Tariff, Original Volume No. 1, First Revised Sheet No. 1.

Comment Date: November 17, 2003.

9. Xcel Energy Services Inc.

[Docket No. ER03–1366–001]

Take notice that on October 27, 2003, Xcel Energy Services Inc. (XES) on behalf of Northern States Power Company (NPS) tendered for filing additional information in support of the Generation Interconnection Agreement filed on September 23, 2003 in Docket No. ER03–1366–000.

XES states that copies of this filing have been served on the parties listed on the service list in this proceeding.

Comment Date: November 17, 2003.

10. Xcel Energy Services Inc.

[Docket No. ER03–1367–001]

Take notice that on October 27, 2003, Xcel Energy Services Inc. (XES), on behalf of Northern States Power Company (NSP) tendered for filing additional information in support of the Generation Interconnection Agreement filed on September 23, 2003 in Docket no. ER03–1367–000.

XES states that copies of this filing have been served on the parties listed on the service list in this proceeding.

Comment Date: November 17, 2003.

11. Perryville Energy Partners, L.L.C.

[Docket No. ER03–1370–001]

Take notice that on October 27, 2003, Perryville Energy Partners, L.L.C. (Perryville) tendered for filing substitute Original Sheet No. 5 to FERC Electric Tariff, Original Volume No. 1. Perryville states that the sheet is one of three pages in Perryville's Statement of Policy and Code of Conduct with Respect to the Relationship between Perryville and the other Cleco Companies. Perryville

requests an effective date of September 24, 2003.

Comment Date: November 17, 2003.

12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–996–001]

Take notice that on October 27, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13, submitted for filing a revised Interconnection and Operating Agreement among Interstate Power and Light Company, a wholly owned subsidiary of Alliant Energy Corporation, (Transmission) and Interstate Power and Light Company, a wholly owned subsidiary of Alliant Energy Corporation, (Generation).

Midwest states that a copy of this filing was served on all parties to the proceeding.

Comment Date: November 17, 2003.

13. AmerenEnergy Medina Valley Cogen, L.L.C.

[Docket No. ER04–8–001]

Take notice that on October 27, 2003, AmerenEnergy Medina Valley Cogen, L.L.C. (AEMVC) submitted for filing a Notice of Succession, pursuant to Sections 35.16 and 131.51 of the Commission's regulations. AEMVC asserts that the purpose of the filing is to amend the Notice of Succession filed on October 2, 2003, in Docket No. ER04–8–001 by submitting the AmerenEnergy Medina Valley Cogen, L.L.C. FERC Electric Tariff, Original Volume No. 1 (Supersedes FERC AES Medina Valley Cogen, L.L.C. FERC Electric Tariff, Original Volume No. 1).

Comment Date: November 17, 2003.

14. Public Service Company of New Mexico

[Docket No. ER04–80–000]

Take notice that on October 27, 2003, Public Service Company of New Mexico (PNM) tendered for filing a Letter of Memorandum from PNM to FPL Energy New Mexico Wind, LLC (FPLE), Southwestern Public Service Company (SPS), Western Area Power Administration (Western), and Farmers Electric Cooperative (FEC) regarding the procedures and methodology agreed to, on an interim basis, to facilitate the provision of auxiliary power to meet certain of the internal power requirements of the FPLE, approximately, 200 MW wind power electric energy generating facility located in eastern New Mexico.

PNM states that copies of the filing have been sent to FPLE, SPS, Western, FEC, the New Mexico Public Regulation Commission, and the New Mexico Attorney General.

Comment Date: November 17, 2003.

15. Allegheny Energy Supply Company, LLC and Monongahela Power Company

[Docket No. ER04–81–000]

Take notice that on October 27, 2003, Allegheny Energy Supply Company, LLC (AE Supply) and Monongahela Power Company (Mon Power) (hereafter together Applicants) submitted for filing rate schedules under which they respectively specify their revenue requirement for providing cost-based Reactive Support and Voltage Control from Generation Sources Service from the generating facilities owned by AE Supply and Mon Power located in the Allegheny Power Zone within the PJM control area administered by the PJM Interconnection. L.L.C. Applicants request an effective date of December 1, 2003 for the proposed rate schedules.

AE Supply states that copies of the filing were posted on the PJM website and the Allegheny Web site.

Comment Date: November 17, 2003.

16. Tampa Electric Company

[Docket No. ER04–82–000]

Take notice that on October 27, 2003, Tampa Electric Company (Tampa Electric) tendered for filing a Notice of Cancellation of the service agreement with Cargill Power Markets, LLC (Cargill) under Tampa Electric's Market-Based Sales Tariff. Tampa Electric proposes that the cancellation be made effective on December 24, 2003.

Tampa Electric states that copies of the filing have been served on Cargill and the Florida Public Service Commission.

Comment Date: November 17, 2003.

17. The Mack Services Group

[Docket No. ER04–83–000]

Take notice that on October 27, 2003, The Mack Services Group tendered for filing a Notice of Cancellation of its Market-Based Rate Authority approved by the Commission in Docket No. ER99–1750–000. The Mack Service's Group requests an effective date of April 1, 2002.

Comment Date: November 17, 2003.

18. New York State Electric & Gas Corporation

[Docket No. ER04–84–000]

Take notice that on October 27, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to section 205 of the Federal Power Act and § 35.13 of the Commission's Regulations, a supplement to Rate Schedule 72, an Agreement with the Municipal Board of the Village of Bath. NYSEG requests an effective date of January 1, 2004.

NYSEG states that copies of the filing were served upon the Municipal Board of the Village of Bath and the Public Service Commission of the State of New York.

Comment Date: November 17, 2003.

19. New York State Electric & Gas Corporation

[Docket No. ER04–85–000]

Take notice that on October 27, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to section 205 of the Federal Power Act and § 35.13 of the Commission's regulations a supplement to Rate Schedule 117, an Agreement with the Delaware County Electric Cooperative.

NYSEG request an effective date of January 1, 2004.

NYSEG states that copies of the filing were served upon the Delaware County Electric Cooperative, Inc. and the Public Service Commission of the State of New York.

Comment Date: November 17, 2003.

20. Illinois Power Company

[Docket No. ER04–86–000]

Take notice that on October 27, 2003, Illinois Power Company (Illinois Power) tendered for filing a Network Integration Transmission Service Agreement entered into by Illinois Power and Archer-Daniels-Midland Company, Service Agreement No. 370. Illinois Power requests an effective date of October 1, 2003.

Comment Date: November 17, 2003.

21. Three Rivers Energy LLC

[Docket No. ER04–88–000]

Take notice that on October 27, 2003, SOWEGA Power LLC (SOWEGA) and Three Rivers Energy LLC (Three Rivers) submitted a rate schedule designated as Three Rivers Energy LLC FERC Rate Schedule No. 2. The rate schedule submitted revises SOWEGA's existing market-based rate schedule to substitute Three Rivers for SOWEGA. SOWEGA and Three Rivers request that the rate schedule become effective upon the date of disposition of SOWEGA's facilities, including SOWEGA's market-based sales tariff, to Three Rivers.

Comment Date: November 6, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC

20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00188 Filed 11–7–03; 8:45 AM]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 3, 2003.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission (Commission) and is available for public inspection.

a. *Type of Application:* New License Application.

b. *Project No.:* 2726–012.

c. *Date Filed:* July 29, 2002.

d. *Applicants:* Idaho Power Company.

e. *Name of Project:* Upper and Lower Malad Hydroelectric Project.

f. *Location:* The project is located on the Malad River in Gooding County, Idaho, near the town of Hagerman. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Lewis Wardle, Project Manager, Hydro Relicensing Department. Idaho Power Company, PO Box 70, Boise, ID 83707, (208) 388–2964.

i. *FERC Contact:* Any questions on this notice should be addressed to John Blair at (202) 502–6092 or e-mail at *john.blair@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if interveners file comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted and is ready for environmental analysis at this time.

l. The existing upper development consists of: (1) A concrete diversion dam consisting of a 100-foot-long gated spillway section and a 44-foot-wide flume intake section; (2) an impoundment approximately 0.9 acre in surface area having a total volume of about 5 acre-feet; (3) a 4,635-foot-long, 15-foot-wide concrete flume having an 80-foot-long overflow spillway with three reject siphons located 304.5 feet upstream of the penstock intake structure; (4) a 105-foot-long, 5-foot-high diversion dam diverting Cove Creek flows to the flume via a 90-foot-long, 3-foot-radius semi-circular steel aqueduct; (5) an 80.5-foot-long, 21-foot-wide concrete intake structure; (6) a 238-foot-long, 10-foot-diameter welded steel penstock; (7) a reinforced concrete powerhouse containing one vertical Francis turbine generator having an installed capacity of 8.27 megawatts (MW); (8) a 0.76-mile-long, 46-kilovolt transmission line running from the powerhouse to the Hagerman substation; and (9) appurtenant facilities.

The existing lower development consists of: (1) A concrete diversion dam located immediately downstream of the upper development powerhouse consisting of a 163-foot-long gated spillway section and a 56-foot-wide flume intake section; (2) an impoundment approximately 0.7 acre in surface area having a total volume of about 5 acre-feet; (3) a 5,318-foot-long, 17-foot-wide concrete flume having a 250-foot-long reject overflow spillway located 2,194 feet upstream of the penstock intake structure and a reject overflow structure located 157 feet upstream of the penstock intake structure; (4) an 85-foot-long, 23-foot-wide concrete intake structure; (5) a 301-foot-long, 12-foot-diameter welded steel penstock; (6) a reinforced concrete powerhouse containing one vertical Francis turbine generator having an installed capacity of 13.5 MW; and (7) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in Item h above.

n. The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and

otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of the availability of the draft EA: April 2004

Initiate 10(j) process: April 2004

Notice of the availability of the final EA: August 2004

Ready for Commission decision on the application: October 2004

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00183 Filed 11–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Reclicensing and a Deadline for Submission of Final Amendments

November 3, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2114–116.

c. *Date Filed:* October 29, 2003.

d. *Applicant:* Public Utility District No. 2 of Grant County, WA.

e. *Name of Project:* Priest Rapids Hydroelectric Project.

f. *Location:* On the Columbia River in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan counties, Washington. The project occupies federal lands managed by the Bureau of Land Management, Bureau of Reclamation, Department of Energy, Department of the Army, and Fish and Wildlife Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Laurel Heacock, Licensing Manager, Public Utility District No. 2 of Grant County, 30 C Street SW, Ephrata, Washington 98823, telephone (509) 754–6622.

i. *FERC Contact:* Charles Hall, telephone (202) 502–6853, e-mail *Charles.Hall@ferc.gov*.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* December 22, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary. Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

m. This application is not ready for environmental analysis at this time.

n. The project includes two developments with a total authorized capacity of 1,755 megawatts (MW) as follows:

(a) The Wanapum development consisting of a dam 186.5 feet high and 8,637 feet long with upstream fish passage facilities, a reservoir with an approximate surface area of 14,680 acres, a powerhouse with ten turbine-generator units with a total nameplate capacity of 900 MW, transmission lines, and appurtenant facilities.

(b) The Priest Rapids development consisting of a dam 179.5 feet high and 10,103 feet long with upstream fish passage facilities, a reservoir with an approximate surface area of 7,725 acres, a powerhouse with ten turbine-generator units with a total nameplate capacity of 855 MW, transmission lines, and appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the *WASHINGTON STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance letter: January 2004

Issue Scoping Document 1 for comments: January 2004

Issue Scoping Document 2: April 2004

Notice of application is ready for environmental analysis: April 2004

Notice of the availability of the draft NEPA document: December 2004

Notice of the availability of the final NEPA document: August 2005

Ready for Commission's decision on the application: August 2005

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance

date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00185 Filed 11–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Application and Preliminary Draft Environmental Assessment (Pdea) and Request for Preliminary Terms and Conditions

November 3, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Draft—New Major License.

b. *Project No.:* 2145–000.

c. *Applicant:* Public Utility District No. 1 of Chelan County (Chelan PUD).

d. *Name of Project:* Rocky Reach Hydroelectric Project.

e. *Location:* On the Columbia River in Douglas County, Washington. The project occupies about 160 acres of federally-owned lands administered by the Bureau of Land Management and U.S. Forest Service.

f. *Applicant Contact:* Gregg Carrington, Chelan PUD, 327 North Wenatchee Avenue, PO Box 1231, Wenatchee, Washington 98807–1231, 509–663–8121 or within Washington State toll-free at 888–663–8121, e-mail: *gregg@chelanpud.org.*

g. *FERC Contact:* David Turner, FERC, 888 First Street, NE., Room 61–11, Washington, DC 20426, (202) 219–3073, e-mail: *david.turner@ferc.gov.*

h. Chelan PUD distributed, to interested parties and Commission staff, an initial review version of their Preliminary Draft Environmental Assessment (PDEA) and draft application on January 26, 2003 with a 90-day comment period. Chelan PUD distributed, to interested parties and Commission staff, a revised version of the PDEA and draft application on October 21, 2003.

i. With this notice we are soliciting preliminary terms, conditions, and recommendations on the PDEA and draft license application that were distributed on October 21, 2003. All comments on the PDEA and draft license application should be sent to the Chelan PUD address above in item (f) with one copy sent to Commission staff at the address above in item (g). For those wishing to file comments with the Commission, an original and eight copies must be filed at the following address: Federal Energy Regulatory Commission, Magalie Salas, Secretary, 888 First St. NE., Washington, DC 20426.[1] All comments should include the project name and number, and bear the heading "Preliminary Comments," Preliminary Recommendations," "Preliminary Terms and Conditions," or "Preliminary Prescriptions." Comments and preliminary recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov)* under the "e-Filing" link.

j. *Comment deadline:* Any party interested in commenting must do so before December 22, 2003.

k. *Locations of the application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item f above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

l. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00186 Filed 11–07–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Should an interested party decide not to submit preliminary terms, conditions and recommendations at this time this will not prejudice or limit their ability to submit final terms, conditions and recommendations after the final application is filed.

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0078, FRL–7585–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting Requirements Under EPA's National Wastewater Operator Training and Technical Assistance Program, EPA ICR 1977.02, OMB Control Number 2040–0238

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) renewal to the Office of Management and Budget (OMB): National Wastewater Operator Training and Technical Assistance Program, EPA ICR Number 1977.02, and OMB Control Number 2040–0238, expiring 09/30/2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 9, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0078, to EPA online using EDOCKET (our preferred method), by email to: *OW_docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailstop 4101T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Interested persons may obtain a copy of the ICR and supporting analysis without charge by contacting the individual listed below.

FOR FURTHER INFORMATION CONTACT: Margaret Dodds, Telephone: (202) 564–0728. Facsimile Number: (202) 501–2396. E-mail: *dodds.margaret@epa.gov.* 1200 Pennsylvania Ave. NW., MS 4204–M, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2003–0078, which 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 OW Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to: *OW_docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailstop 4101T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102, or go to *http://www.epa.gov/edocket*.

Affected entities: Entities potentially affected by this action are state and local governments, state and county colleges, and those organizations which provide training assistance through the Clean Water Act 104(g)(1) Program to municipal wastewater treatment plants.

Title: National Wastewater Operator Training and Technical Assistance Program. (OMB Control No. 2040–0238. EPA ICR No.: 1977.02, expiring 09/30/2004.

Abstract: The Wastewater Operator Training Program provides on-site technical assistance to municipal wastewater treatment plants. Information will be collected from the network of forty-six 104(g)(1) training centers set up throughout the United States. The information will be collected to identify the facilities assisted, the different types of assistance the program provides and the environmental outcomes and benefits of the assistance provided by the program. The information will be collected and submitted on either an annual or semi-annual basis. A Microsoft Access database and a Lotus 1–2–3 spreadsheet have been developed for this purpose. This ICR will be used by EPA for the technical and financial management of the 104(g)(1) Program. It is strongly suggested that the 104(g)(1) Program training centers participate in the information collection although it is not mandatory. All information in the data system will be made public upon request. 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 are listed in the Code of Federal Regulations title 40, part 9 and in the Code of Federal Regulations title 48, chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The projected combined annual burden hours of this ICR to all respondents will be approximately 512 hours. The average annual burden hours to each 104(g)(1) training center grantee will be 7 hours, for a total of 322 hours per year, at an annual cost of $9717.96 (assuming an average hourly salary of $30.18). The average annual burden hours to the EPA's Regional Offices and Headquarters will be 16 hours each, for a total of 176 burden hours per year, at an annual cost of $6899.20 (assuming an average hourly salary of $39.20).

Data will be collected on an annual basis, in May of each year, for the Microsoft Access database collection, and data for the Lotus 1–2–3 spreadsheet information collection will be done on a bi-annual basis, in May and November of each year. Although this information collection is not mandatory, it is expected that 100% of the 104(g) training centers will respond to this collection request. All forty-six (46) training centers and EPA have the necessary equipment, desk-top computers and software to collect and manage this information. There will be no additional start-up or maintenance costs associate with this project to perform this information collection request. 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.

Dated: October 24, 2003.

Jane S. Moore,

Acting Director, Office of Wastewater Management.

[FR Doc. 03–28215 Filed 11–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0337; FRL–7333–9]

Nominations to the FIFRA Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel (SAP) established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Panel was created on November 28, 1975, and made a statutory Panel by amendment to FIFRA, dated October 25, 1988. Public comment on the nominations is invited, as these comments will be used to assist the Agency in selecting three new chartered Panel members.

DATES: Comments, identified by docket ID number OPP–2003–0337, must be received on or before December 10, 2003.

ADDRESSES: Comments may be submitted electronically (preferred), through hand delivery/courier, or by mail. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Steven Knott, Assistant Executive Secretary, FIFRA SAP Staff (7201M), Office of Science Coordination and Policy, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: *knott.steven@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0337. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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 submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. 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 Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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 in EPA's electronic public docket 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically (preferred), through hand delivery/courier, or by mail. To ensure proper receipt by EPA, identify the appropriate docket ID number 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. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0337. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or

other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0337. 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 comment 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 comments on a disk or CD ROM that you hand deliver or send by courier to the address identified in Unit I.C.2. or mail to the mailing address identified in Unit I.C.3. 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 hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0337. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail.* Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0337. For questions about delivery options, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

Amendments to FIFRA, enacted November 28, 1975, include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel prior to being made public or issued to a registrant. In accordance with section 25(d), the Scientific Advisory Panel is to have an opportunity to comment on the health and environmental impact of such actions. The Panel shall also make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists.

In accordance with the statute, the SAP is a permanent panel composed of seven members, selected and appointed by the Deputy Administrator of EPA from nominees submitted by both the National Science Foundation (NSF) and the National Institutes of Health (NIH). The Agency is, at this time, selecting three new members to serve on the panel as a result of membership terms that will expire this year. The Agency requested nominations of experts to be selected from the fields of ecological risk assessment (especially probabilistic ecological risk assessment), human health risk assessment methodology and uncertainty analysis, and veterinary pathology. Nominees should be well published and current in their fields of expertise. The statute further stipulates that we publish the name, address, professional affiliation, and a brief biographical sketch of each nominee in the **Federal Register** and solicit public comments regarding the candidates nominated.

III. Charter

A Charter for the FIFRA Scientific Advisory Panel, dated October 25, 2002, was issued in accordance with the requirements of the Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770 (5 U.S.C. App. I). The qualifications of members as provided by the Charter follow.

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. No persons shall be ineligible to serve on the Panel by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). The Deputy Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of 40 CFR part 3, subpart F, Standards of Conduct for Special Government Employees, which include rules regarding conflicts of interest. Each nominee selected by the Deputy Administrator, before being formally appointed, is required to submit a confidential statement of employment and financial interests, which shall fully disclose, among other financial interests, the nominee's sources of research support, if any.

In accordance with section 25(d) of FIFRA, the Deputy Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, educational background, employment history, and scientific publications. The Agency is required to publish in the **Federal Register** the name, address, and professional affiliations of each nominee and to seek public comment on the nominees.

B. Applicability of Existing Regulations

With respect to the requirements of section 25(d) of FIFRA that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to special government employees, which include advisory committee members, will apply to the members of the Scientific Advisory Panel. These regulations appear in 40 CFR part 3, subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d) of FIFRA, EPA in May 2003, requested NIH and NSF to nominate scientists to fill three vacancies occurring on the Panel. The Agency requested nomination of experts in the fields of ecological risk assessment (especially probabilistic ecological risk assessment), human health risk assessment methodology and uncertainty analysis, and veterinary pathology. NIH and NSF responded by letter, providing the Agency with a total of 29 nominees. Fifteen of the 29 nominees are interested and available to actively participate in SAP meetings.

IV. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data of nominees being considered for membership on the FIFRA Scientific Advisory Panel. The Agency seeks to fill three vacancies occurring this year.

A. Nominations for the Field of Ecological Risk Assessment

1. *Nominee.* Burger, Joanna, Ph.D., Distinguished Professor of Biology,

Division of Life Sciences, Rutgers University; Professor in the School of Public Health in New Jersey, Piscataway, NJ.

i. *Expertise.* Ecotoxicology methods, design, data collection and analysis, ecological risk methods and assessment.

ii. *Education.* Ph.D., Ecology and Behavioral Ecology, University of Minnesota.

iii. *Professional experience.* Dr. Burger has had over 30 years of experience in ecological studies of a wide range of animals in their natural environments, and nearly 25 years working in the fields of ecological risk and ecotoxicology. She has served as Director of the Graduate Program in Ecology at Rutgers University for 15 years, and has served as Director of the Chemical Analysis Laboratory for the National Institute of Environmental Health Sciences (NIEHS) Center of Excellence at Rutgers University/ University of Medicine and Dentistry of New Jersey (UMDNJ), Robert Wood Johnson Medical School. During this period, she has been actively involved in research on the effects of toxic chemicals on behavior and neurodevelopment, on biomonitoring of toxic chemicals and ecological endpoints, on the risks from chemical contaminants in fish and wildlife, and on developing methods for ecological risk assessment at different levels of ecological complexity. She has published over 350 refereed papers in these areas, and has written or edited over 15 books. Dr. Burger has served as a member of the National Research Council (NRC) Board of Environmental Science and Toxicology, Board on Biology, Commission of Life Sciences and other NRC committees. She also has served on several SCOPE committees, most recently as the Co-Chair of an international meeting on endocrine disruptors. Dr. Burger has served on EPA, U.S. Fish and Wildlife Service, and National Oceanic and Atmospheric Administration (NOAA) advisory councils as well as the New Jersey Endangered and NonGame Species Council. She teaches ecological risk and serves as an environmental advisor to numerous local, State, and Federal agencies.

2. *Nominee.* James, Margaret O., Ph.D., Professor and Chair, Department of Medicinal Chemistry, College of Pharmacy, University of Florida, Gainesville, FL.

i. *Expertise.* Xenobiotic metabolism, environmental pollutants.

ii. *Education.* B.Sc. (Honors), Chemistry, University College London, UK; Ph.D., Organic Chemistry, St. Mary's Hospital Medical School, University of London.

iii. *Professional experience.* Dr. James completed a 3-year post-doctoral fellowship in the pharmacology branch of the National Institute of Environmental Health Sciences (NIEHS). She was appointed as a research associate, and then a senior staff fellow at the NIEHS satellite laboratory at the Whitney Laboratory in St. Augustine, FL. She has been on the faculty of the Departments of Medicinal Chemistry and Pharmacology and Therapeutics at the University of Florida since 1980. Dr. James also serves as the director of the University of Florida Superfund Basic Research Program project grant. Dr. James is a founding member of the interdisciplinary toxicology graduate program at the University of Florida. She has authored or co-authored over 100 peer reviewed original research papers and several book chapters. Dr. James served on the Environmental Health Sciences review panel from 1991 to 1995, and on the Toxics Advisory Committee, National Marine Fisheries Service, NOAA from 1992 to 1994. She has served as Secretary of the International Society for the Study of Xenobiotics (2000 to 2003) and is a former member of the editorial board of Chemico-Biological Interactions. Dr. James currently serves on the editorial boards of Drug Metabolism and Disposition and Aquatic Toxicology. She is the guest editor of a special volume of Marine Environmental Research to be published in 2004. Dr. James' research interests are in biotransformation pathways involved in the formation or detoxification of chemically reactive metabolites of xenobiotics.

3. *Nominee.* Portier, Kenneth M., Ph.D., Associate Professor of Statistics and Agricultural Experiment Station Statistician, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL.

i. *Expertise.* Applied statistics, biostatistics, statistical computing, and the teaching of statistics.

ii. *Education.* B.S., Mathematics, Nicholls State University; M.S., Statistics, University of North Carolina, Chapel Hill; Ph.D. in Biostatistics, University of North Carolina, Chapel Hill.

iii. *Professional experience.* Dr. Portier has taught statistical methods on the graduate level, and has served as a statistical consultant to researchers in agriculture, natural resources, and the environment at the University of Florida since 1979. His participation in the U.S. Department of Agriculture (USDA) Higher Education Programs (HEP) funded teaching grants has included development of web-based materials for teaching natural resources sampling, and developing a senior graduate course in forested watersheds. Dr. Portier is collaborating with other University of Florida researchers on grants from the NSF, USDA, NOAA, and the Department of Interior (DOI). Dr. Portier has been a regular member of EPA and National Toxicology Program science advisory panels reviewing ecological risks from agriculture-related chemicals and practices. He has co-authored papers in many of the premier journals in agriculture, natural resources, and environmental sciences.

4. *Nominee.* Regan, Helen M., Ph.D., Assistant Professor, Department of Biology, Ecology Program, San Diego State University, San Diego, CA.

i. *Expertise.* Ecological risk assessment, quantitative conservation ecology, population models and mathematical treatments of uncertainty in ecological risk assessment.

ii. *Education.* B.S. (with first-class honors), Applied Mathematics, Latrobe University, Victoria, Australia; Ph.D., Applied Mathematics, University of New England, New South Wales, Australia.

iii. *Professional experience.* Dr. Regan's research activities include: Treatment of uncertainty in contaminant exposure models for wildlife; population-level ecological risk assessment of endangered and threatened species using stochastic population models; systematic decisionmaking for management and conservation planning; and assessment of uncertainty in endangered species classification protocols. She has held postdoctoral research fellow appointments with the University of Melbourne and the National Center for Ecological Analysis and Synthesis, University of California, Santa Barbara. Dr. Regan has served as a consultant for the Cooperative Research Center for Catchment Hydrology (Australia) and for Forestry Tasmania (Australia). She has served as an invited panelist for the Industrial Risk Management Forum, Environmental Futures Forum (Victorian Environmental Protection Authority, Australia) and as a member of the review team for Improvements in Applications of Models in Ecological Risk Assessment (sponsored by the American Chemistry Council). She is a contributing author to Ecological Modeling in Risk Assessment: Chemical Effects on Populations, Ecosystems, and Landscapes (Pastorok, Bartell, Ferson and Ginzburg, eds.), Lewis publishers, Boca Raton, FL, 2001. She was a

scientific reviewer for the US Fish and Wildlife Service Revised Proposal for Critical Habitat for Forty-Seven Plant Species on the Island of Hawaii and served on the scientific review panel for Forest Service Species Viability Assessment Processes at the National Center for Ecological Analysis and Synthesis, University of California, Santa Barbara. In September 2003, she was an invited participant for the Pellston Workshop on Population-Level Ecological Risk Assessment (focus on chemical contaminants), sponsored by the Society for Environmental Toxicology and Chemistry, held in Roskilde, Denmark.

5. *Nominee.* Scott, Geoffrey I., Ph.D., Acting Director, Charleston Center for Coastal Environmental Health and Biomolecular Research (CCEHBR), National Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Charleston, SC.

i. *Expertise.* Aquatic and marine toxicology, ecological assessments of the impacts of agricultural runoff, oil spills, pesticides, bacterial contamination, and water chlorination.

ii. *Education.* B.S., Biology, Wofford College; M.S. and Ph.D., Marine Science, University of South Carolina.

iii. *Professional experience.* Dr. Scott's research experience includes working as an Aquatic Toxicologist for the EPA, where he helped develop a suite of rapid assessment indices for assessing ecological damages from oil spills. He has served as a tenured Associate Professor in the School of Public Health at the University of South Carolina (USC) where he received the 1989 Outstanding Young Researcher Award in Public Health. While at USC, most of Dr. Scott's research focused on the impacts of agricultural pesticide non-point source runoff on estuarine ecosystems. Dr. Scott served as Chief of the Marine Ecotoxicology Branch at NOAA CCEHBR from 1993 to 2001. He has collaborated with peers in his discipline to write both the conceptual framework for the Urbanization in the Southeast Estuarine Systems (USES) study, and the conceptual framework for the Land Use Coastal Environmental Study (LUCES). Dr. Scott was appointed by the NOAA Administrator to represent NOAA in a Federal agency task force on endocrine disruptors, culminating in the Raleigh Workshop, where he co-chaired the sessions on neuro-endocrine effects. Dr. Scott has served on numerous government and industry advisory panels, including the EPA advisory board on endocrine disrupting chemicals; EPA's Food Quality Protection Act Science Review Board; the EPA Environmental Technology Verification Program, Water Stakeholder Committee; the South Carolina Coastal Pesticide Advisory Committee; the United Nations Gulf of Guinea Large Marine Ecosystem Team; and the Research Delegation Exchange with the Black Sea Research Institute. Dr. Scott has served as a board member, Vice President, and President of the Carolina Chapter of the Society of Environmental Toxicology and Chemistry. Dr. Scott is also an Associate Professor in the Medical University of South Carolina, the University of Charleston, and an Adjunct Associate Professor in the Institute of Human and Environmental Health, Texas Tech University.

B. Nominations for the Field of Human Health Risk Assessment Methodology and Uncertainty Analysis

1. *Nominee.* Anderson, Elizabeth L., Ph.D., President and Chief Executive Officer, Sciences International, Inc., Alexandria, VA.

i. *Expertise.* Risk assessment and carcinogenicity.

ii. *Education.* B.S., Chemistry, College of William and Mary; M.S., Organic Chemistry, University of Virginia; Ph.D., Organic Chemistry, American University.

iii. *Professional experience.* Dr. Anderson regularly participates in and directs an interdisciplinary group of scientists and engineers specializing in risk assessment. She has over 20 years of experience working in the field of risk assessment and is currently the Editor-in-Chief of *Risk Analysis: An International Journal.* Previously, while employed by the EPA, Dr. Anderson founded the Agency's central risk assessment program, and directed it for 10 years. In this capacity, she served as the Executive Director of the EPA committee that initially adopted risk assessment as the basis for implementing the Agency's regulatory mandates. She also founded EPA's Carcinogen Assessment Group and the Office of Health and Environmental Assessment. Dr. Anderson received the EPA Gold Medal for exceptional service. She has participated in numerous risk-related panels and committees including those for inter-agency risk assessment initiatives, the National Academy of Sciences, and the National Cancer Institute. Dr. Anderson has worked extensively on international risk assessment issues to address human health and ecological consequences of exposure to environmental toxicants for organizations that include the World Health Organization and the Pan American Health Organization. She was President, Chief Executive Officer, and Chairman of the Board of Clement International Corporation and on the Board of Directors of ICF-Kaiser International. Dr. Anderson is a co-founder and past-President of the Society for Risk Analysis. She has participated in numerous national and international commissions and organizations concerned with risk based issues, and has lectured and published widely in the field of risk assessment.

2. *Nominee.* Crawford-Brown, Douglas, Ph.D., Professor, Departments of Environmental Sciences and Engineering and in Public Policy Analysis; also on the Resource Faculty of the Department of Philosophy; Chairman, Environmental Sciences and Studies Undergraduate Program; and Director, Carolina Environmental Program, University of North Carolina, Chapel Hill, NC.

i. *Expertise.* Environmental modeling, exposure assessment, risk assessment, and the application of scientific models in the assessment and selection of environmental policies.

ii. *Education.* B.S., M.S., and Ph.D., Physics and Nuclear Science, Georgia Institute of Technology.

iii. *Professional experience.* Dr. Crawford-Brown's teaching and research are in the areas of environmental modeling, exposure assessment, risk assessment, and the application of scientific models in the assessment and selection of environmental policies. His current research focuses on risk assessment in support of policy in water and air; on development of biomathematical models of human health risk following exposure to radionuclides, chemicals, and microbes; on dose reconstruction methodologies; and on the development of decision support systems to analyze risks from environmental contaminants. He has worked extensively in the field of exposure and dose assessment in support of epidemiological studies, with a primary focus on exposure to radionuclides and radiation. Dr. Crawford-Brown has written over 120 journal articles in his discipline, and has authored a series of books on environmental risk assessment: *Theoretical and Mathematical Foundations of Human Health Risk Analysis* (1997), *Risk-Based Environmental Decisions: Methods and Culture* (1999), and *Mathematical Methods of Environmental Risk Modeling* (2001). Dr. Crawford-Brown has served on a number of federal advisory committees for EPA, and currently serves as a Technical Advisor for the American Waterworks Association in the areas of risk and

decisions. He has chaired, or has served as a member of a wide variety of national and international committees in areas related to risk and the environment, including those established by EPA, the World Trade Organization, the Department of Energy, NIH, the International Life Sciences Institute, and the Chemical Industry Institute of Toxicology.

3. *Nominee.* Frey, H. Christopher, Ph.D., Associate Professor, Department of Civil, Construction, and Environmental Engineering, North Carolina State University, Raleigh, NC.

i. *Expertise.* Quantification of variability and uncertainty, measurement, modeling and evaluation of energy and environmental control systems, and exposure and risk assessment.

ii. *Education.* B.S., Mechanical Engineering, University of Virginia; Master of Engineering, Mechanical Engineering, Carnegie-Mellon University; Ph.D., Engineering and Public Policy, Carnegie-Mellon University.

iii. *Professional experience.* Dr. Frey's research interests are primarily in: Development and demonstration of methods for quantification of variability and uncertainty; modeling and evaluation of energy and environmental control systems; measurement and modeling of real-world tailpipe emissions; and exposure and risk assessment. He has been a principal or co-principal investigator for 25 externally sponsored university research projects in these areas. Dr Frey has published 26 peer-reviewed journal papers, co-authored the book, *Probabilistic Techniques in Exposure Assessment: A Handbook for Dealing with Variability and Uncertainty in Models and Inputs*, authored three other book chapters and authored or co-authored numerous conference proceedings papers and technical reports. He has served as a reviewer for 14 journals, and as an external reviewer for 8 draft EPA reports, 2 USDA risk assessments, and a draft Food and Agriculture Organization (FAO)/World Health Organization (WHO) exposure assessment guideline. He has served in numerous advisory capacities for EPA including on the EPA's Scientific Advisory Panel and on the Science Advisory Board. Dr. Frey has participated in the development of guidance documents and handbooks, including chairing a workshop in 1998 that recommended methods for developing input distributions in probabilistic analysis, and a 2001 workshop that recommended approaches for sensitivity analysis applied to food safety risk models. Dr. Frey participated in international expert panels for the Intergovernmental Panel on Climate Change, pertaining to guidelines for uncertainty analysis, and for FAO/WHO regarding guidelines for probabilistic exposure assessment. Dr. Frey is active in the Society for Risk Analysis (SRA) and the Air and Waste Management Association (AWMA) and also is a member of the American Society of Civil Engineers. Formerly, he was president of the Research Triangle Chapter of SRA, a member of the SRA Council, and Chair of the AWMA's EE-1 Exposure and Health Effects Technical Committee. He is a recipient of a 1992 AAAS/EPA Fellowship, the 1992 AAAS Barnard Scholarship, a National Science Foundation CAREER award, and the SRA's 1999 Chauncy Starr Award for exceptional contributions to the field of risk analysis.

4. *Nominee.* Gray, George M., Ph.D., Executive Director, Harvard Center for Risk Analysis, Harvard School of Public Health, Boston, MA.

i. *Expertise.* Risk assessment, interpretation of rodent bioassays, risk management, risk communication.

ii. *Education.* B.S., Biology, University of Michigan; M.S. and Ph.D., Toxicology, University of Rochester.

iii. *Professional experience.* Dr. Gray's primary research interests are risk characterization and risk communication with a focus on food safety and agriculture and chemicals in the environment. He has published on both the scientific bases of human health risk assessment and its application to risk policy with a focus on risk/risk tradeoffs in risk management. Dr. Gray teaches toxicology and risk assessment to graduate students and to participants in the Continuing Professional Education Program at the Harvard School of Public Health. He serves on the Risk Assessment Task Force of the Society of Toxicology, and on government panels, including a Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN) Food Advisory Committee, and the NIEHS National Advisory Environmental Health Science Council.

5. *Nominee.* Zeise, Lauren, Ph.D., Chief, Reproductive and Cancer Hazard Assessment Section, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency, Oakland, CA.

i. *Expertise.* Cancer and reproductive risk assessment methodologies and applications.

ii. *Education.* M.S. and Ph.D., Harvard University.

iii. *Professional experience.* Dr. Zeise has served as Chief of the Reproductive and Cancer Hazard Assessment Section since 1991, overseeing a variety of the State's cancer, reproductive, and ecological risk assessment activities. Dr. Zeise currently serves on the EPA Science Advisory Board Research Strategies Advisory Committee, on the National Institute of Medicine Board of Health Promotion and Disease Prevention, and on the NRC Board on Environmental Sciences and Toxicology. She is a member, fellow, and councilor of the Society of Risk Analysis and is on the editorial board of that society's journal. The National Cancer Institute Smoking and Tobacco Smoke monograph, Health Effects of Environmental Tobacco Smoke, was conceived and developed under her editorial direction. She is co-author and co-editor of the 1999 International Agency for Research on Cancer monograph Quantitative Estimation and Prediction of Cancer Risk. Dr. Zeise has served on the EPA Science Advisory Board Environmental Health Committee and Integrated Risk Project, and as a consultant to the Clean Air Act Scientific Advisory Committee, Environmental Engineering Committee, FIFRA Scientific Advisory Panel, EPA Board of Scientific Counselors, and on other *ad hoc* committees of EPA. She also has served on committees of the National Institute of Medicine, National Research Council, Consumer Product Safety Commission, National Toxicology Program, and the Office of Technology Assessment.

C. Nominations for the Field of Veterinary Pathology

1. *Nominee.* Chambers, Janice E., Ph.D., Director, Center for Environmental Health Sciences, and William L. Giles Distinguished Professor, College of Veterinary Medicine, Mississippi State University, MS.

i. *Expertise.* Pesticide toxicology, neurochemical and behavioral effects of pesticides, potential effects of pesticides on infants and children, mechanism of action and biotransformation of neurotoxicants and other xenobiotics, predictive modeling of the effects of mixtures.

ii. *Education.* B.S., Biology, University of San Francisco and Ph.D., Animal Physiology, Mississippi State University.

iii. *Professional experience.* Dr. Chambers directs several research projects that deal with the effects of pesticides in mammalian systems to determine the potential human health effects of pesticide exposures.

Specifically, there are projects related to the neurochemical and behavioral effects of pesticides in developing organisms as well as the metabolism of pesticides in developing organisms to yield predictions about potential effects of pesticides in infants and children. Other Projects are involved in developing mathematical predictions of the effects of mixtures of pesticides on the nervous system so that predictive models can be generated to potentially describe the effects of future uncharacterized mixtures. Dr. Chambers has been the Principal Investigator for numerous federally funded competitive grants in the field of toxicology. Because of her expertise, she has been asked to serve on a number of advisory boards and prestigious committees. Dr. Chambers is board certified as a toxicologist by the American Board of Toxicology and the Academy of Toxicological Sciences. As Director of the Center for Environmental Health Sciences, she has developed an interdisciplinary research center specializing in pesticide toxicology and funded primarily by NIH. The center comprises the areas of neurotoxicology, biochemical toxicology, analytical chemistry, biostatistics, epidemiology, computational chemistry, computational simulation, biochemistry, and endocrinology.

2. *Nominee.* Dragan, Yvonne P., Ph.D., Program Director, Hepatotoxicology Center for Excellence, National Center for Toxicological Research, FDA, Jefferson, AR.

i. *Expertise.* Pharmacology, toxicology, carcinogenesis, mode of action, and human health risk assessment.

ii. *Education.* B.A., Biology, Smith College; Ph.D., Pharmacology and Toxicology, Medical College of Virginia.

iii. *Professional experience.* Dr. Dragan received her Ph.D. in Pharmacology and Toxicology from the Medical College of Virginia in 1988. She performed postdoctoral work in the Department of Oncology at the University of Wisconsin in Madison at the McArdle Laboratory for Cancer Research from 1988 until 1998. She was a member of the School of Public Health faculty at the Ohio State University from 1998 until 2001. Dr. Dragan is currently the Director of the Program in Hepatotoxicity at the National Center for Toxicological Research in Jefferson, AR. She has held her current position at NCTR since 2002 and is an adjunct Associate Professor in Pharmacology and Toxicology at the University of Arkansas for Medical Sciences.

3. *Nominee.* Haschek-Hock, Wanda M., Ph.D., Director, Graduate Training Program in Toxicologic Pathology and Professor, Comparative Pathology, Department of Veterinary Pathobiology, College of Veterinary Medicine, University of Illinois at Urbana-Champaign, Urbana, IL.

i. *Expertise.* Pathology, veterinary diagnostic and toxicologic; mycotoxicology.

ii. *Education.* B.V.Sc., University of Sydney; Ph.D., Veterinary Pathology, Cornell University.

iii. *Professional experience.* Dr. Haschek-Hock has 30 years of experience in diagnostic and toxicologic pathology including teaching, research, and service. Her research has been in pathophysiology of chemicals and natural toxins found in the environment. Her current research focus is mycotoxins and food safety. Dr. Haschek-Hock has over 100 scientific peer-reviewed publications in the fields of pathology and toxicology, and is senior editor of the *Handbook of Toxicologic Pathology* (1991, 2002), and *Fundamentals of Toxicologic Pathology* (1998). She developed and directs the Graduate Training Program in Toxicologic Pathology and the biannual international Continuing Education Course in Industrial Toxicology and Pathology. She was Head of the Department of Veterinary Pathology at the University of Illinois for 6 years. She has served as President of the Society of Toxicology's Comparative and Veterinary Specialty Section; on the Board of Directors of the American Board of Toxicology; as Associate Editor for Toxicological Sciences; as an Editorial Board member for Fundamental and Applied Toxicology, Veterinary Pathology, and Toxicologic Pathology. Dr. Haschek-Hock also has served as Councilor of the American College of Veterinary Pathologists and as Councilor and, currently, Secretary Treasurer of the Society of Toxicologic Pathology. She recently served on the FDA Veterinary Medicine Advisory Committee for the Center for Veterinary Medicine.

4. *Nominee.* Songer, J. Glenn, Ph.D., Professor, Department of Veterinary Science and Microbiology, University of Arizona, Tucson, AZ.

i. *Expertise.* Infectious disease epidemiology and diagnosis, pathogenesis of gram-positive bacterial infections, clostridial toxins, clostridial enteric disease.

ii. *Education.* B.S., Biology, Mid-America Nazarene College; M.A., Preventive Medicine, University of Texas Medical Branch; Ph.D., Veterinary Microbiology, Iowa State University.

iii. *Professional experience.* Dr. Songer's research has focused on two primary areas. The major emphasis at present is elucidation of the role of membrane active bacterial toxins in pathogenesis of animal disease. In addition, he has developed and applied *in vitro* methods, including rapid molecular approaches, to diagnosis of animal disease. Dr. Songer is a member of the American Society for Microbiology, the American Association of Veterinary Laboratory Diagnosticians, the Conference of Research Workers in Animal Disease, the U.S. Animal Health Association and is a Fellow of the American Academy of Microbiology. He has authored and co-authored numerous papers in his field during the past 20 years. He has served on numerous national and international panels on matters of interest in his field including committees and panels for USDA and NIH.

5. *Nominee.* Woods, Leslie Willis, D.V.M., Associate Professor, Clinical Diagnostic Pathology, California Animal Health and Food Safety Laboratory System, School of Veterinary Medicine, University of California, Davis, CA.

i. *Expertise.* Toxicology and infectious diseases in mammalian wildlife and avian species.

ii. *Education.* B.A., Chemistry, University of San Diego; D.V.M., University of California, Davis; Ph.D. in Comparative Pathology, University of California.

iii. *Professional experience.* Dr. Woods became a professor of clinical diagnostic pathology in 1997 and has a joint appointment at the California Animal Health and Food Safety Laboratory System and the Pathology, Microbiology, and Immunology Department in the School of Veterinary Medicine, University of California. Her research interests are in infectious diseases and toxicoses of wildlife and exotic and companion avian species, and infectious diseases of mammalian wildlife species. Dr. Woods discovered and described a new adenoviral hemorrhagic disease of deer that has been responsible for high mortality in the mule deer species in the western United States. Dr. Woods' other area of interest is toxicology. Her graduate research program included *in vitro* and *in vivo* studies using respiratory toxins. Dr. Woods has been a Diplomate of the American College of Veterinary Pathologists since 1993.

List of Subjects

Environmental protection, pesticides and pests.

Dated: November 3, 2003.

Joseph J. Merenda,

Director, Office of Science Coordination and Policy.

[FR Doc. 03–28217 Filed 11–7–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7585–1]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability; In Re: Arcanum Iron and Metal Site, Arcanum, OH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given of a proposed administrative settlement under CERCLA concerning the Arcanum Iron and Metal Site ("Site") in Arcanum, Ohio. Subject to review and comment by the public pursuant to this Notice, the settlement has been approved by the United States Department of Justice.

The Settling Parties, Alan and Denise Hansbarger, currently own property adjacent to the Site and have entered into a real estate contract with the owner of the Site to purchase approximately 17 acres of property including the Site. The Settling Parties plan to use the land for agricultural purposes.

Under the terms of the settlement, the Settling Parties have agreed to provide partial reimbursement to the U.S. EPA Hazardous Substance Superfund for costs incurred by the U.S. EPA in cleaning up the Site. In exchange for these commitments, the United States covenants not to sue or take administrative action against the Settling Parties. In addition, the Settling Parties will receive contribution protection pursuant to section 113(f)(2) of CERCLA. Finally, U.S. EPA will remove its lien on the property.

For thirty (30) days following the date of publication of this notice the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before December 10, 2003.

ADDRESSES: The proposed settlement, additional background information relating to the settlement, and the Agency's response to any comments received are available for public inspection at the Arcanum Public Library, 101 W. North Street, Arcanum, Ohio, and at the EPA, Region 5, 7th Floor File Room, 77 West Jackson Boulevard, Chicago, Illinois. In addition, a copy of the proposed settlement also may be obtained from Richard M. Murawski, Assistant Regional Counsel (C–14J), Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, or by calling (312) 886–6721. Comments should reference the Arcanum Iron and Metal Site, Arcanum, Ohio and should be addressed to Richard M. Murawski, Assistant Regional Counsel (C–14J), Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard M. Murawski, Assistant Regional Counsel (C–14J), Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604, or call (312) 886–6721.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601–9675.

Dated: October 31, 2003.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 03–28216 Filed 11–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7584–7]

Proposed Administrative Past Cost Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of Getzen Musical Instruments Superfund Site, Elkhorn, WI

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Getzen Musical Instruments Site ("the Site") in Elkhorn, Wisconsin, with two parties: John W. Dadmun and Harold M. Knowlton ("the settling parties"). The settlement requires the settling parties to pay $65,580.05 to the Hazardous Substance Superfund.

In exchange for their payments, the United States covenants not to sue or take administrative action pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), to recover costs that the United States paid in connection with the Site through the effective date of the settlement. In addition, the settling parties are entitled to protection from contribution actions or claims as provided by Sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for response costs incurred by EPA at the Site through the effective date of the agreement.

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois, 60604.

DATES: Comments must be submitted on or before December 10, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois, 60604. A copy of the proposed settlement may be obtained from Connie Puchalski, Section Chief , U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 886–6719. Comments should reference the Getzen Musical Instruments Superfund Site, Elkhorn, Wisconsin, and EPA Docket No. V–W–04–C–763, and should be addressed to Connie Puchalski, Section Chief, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Connie Puchalski, Section Chief, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 886–6719.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Dated: October 24, 2003.

William E. Muno,

Director, Superfund Division.

[FR Doc. 03–28214 Filed 11–7–03; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 57]

Agency Information Collection Activities; Proposed Collection, Comment Request

AGENCY: Export-Import Bank of the United States (Ex-Im Bank).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, the Export-Import Bank of the United States will be submitting to the Office of Management and Budget (OMB) a request to review and approve a revised exporter and banker survey. The purpose of the survey is to fulfill a statutory mandate (The Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635) which directs Ex-Im Bank to report annually to the U.S. Congress any action taken toward providing export credit programs that are competitive with those offered by official foreign export credit agencies. The Act further stipulates that the annual report on competitiveness should include the results of a survey of U.S. exporters and U.S. commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with U.S. exporters.

Accordingly, Ex-Im Bank is requesting that the proposed survey (EIB No. 00–02 be sent to approximately 50 respondents, split equally between bankers and exporters. The revised survey is similar to the previous survey, as it asks bankers and exporters to evaluate the competitiveness of Ex-Im Bank's programs vis-á-vis foreign export credit agencies. However, it has been modified in order to account for newer policies and to capture enough information to provide a better analysis of our competitiveness. In addition, the survey will be available on Ex-Im Bank's Website, *http://www.exim.gov,* with recipients encouraged to respond on-line as well.

DATES: Written comments should be received on or before January 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Alan Jensen, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., room 1279, Washington, DC 20571, (202) 565–3767.

SUPPLEMENTARY INFORMATION: With respect to the proposed collection of information, Ex-Im Bank invites comments as to

—Whether the proposed collection of information is necessary for the proper performance of the functions of Ex-Im Bank, including whether the information will have a practical use;

—The accuracy of Ex-Im Bank's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

—Ways to minimize the burden of 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.

Title and Form Number: 2003 Exporter & Banker Survey of Ex-Im Bank Competitiveness, EIB Form 00–02.

OMB Number: 3048–0004.

Type of Review: Revision of a currently approved collection.

Annual Number of Respondents: 50.

Annual Burden Hours: 50.

Frequency of Reporting or Use: Annual Survey.

Dated: November 4, 2003.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

PART 1 – EXPORTER/BANKER COMPANY PROFILE

[Note: See "Part 1 Attachment" for answer choices to questions 1-6 below.]

Company Name _____ Address _____

Years in Business [ ] Years in Exporting/Trade Finance [ ]

Person Completing the Survey _____ Title _____

Phone Number _____ Fax Number _____ Email _____

Have you used Ex-Im Bank's medium-term or long-term program in the previous calendar year? [ ]

Which medium/long-term programs did you use? Check all that apply:

☐ Insurance ☐ Loans ☐ Guarantee

Compared to 2002, my 2003 volume of exports/trade finance was: [1.]

EXPORTERS

2003 total sales volume [2.] 2003 total U.S. export sales volume [3.]

% of total export sales volume that was Ex-Im Bank supported [4.]

BANKERS

2003 total export credit extended with a term over one year [5.]

% of 2003 total export credit extended with a term over one year that was Ex-Im Bank supported [6.]

PART 2–EXPERIENCE WITH FOREIGN EXPORT CREDIT AGENCIES (ECAs)

[Note: See "Part 2 Attachment" for the possible answer choices to the questions below.]

Please indicate your experience in the previous calendar year in using, receiving support from or working with other official ECAs. Please select the appropriate answer for each ECA listed.

1.

Canada (EDC)		Japan (NEXI)	
France (Coface)		UK (ECGD)	
Germany (Hermes)		Other (identify)	
Italy (SACE)		Other (identify)	
Japan (JBIC)		Other (identify)	

Please indicate your experience in the previous calendar year in facing competitors that received support from foreign official ECAs. Please select the appropriate answer for each ECA listed.

1.

Canada (EDC)		Japan (NEXI)	
France (Coface)		UK (ECGD)	
Germany (Hermes)		Other (identify)	
Italy (SACE)		Other (identify)	
Japan (JBIC)		Other (identify)	

PART 2 (Continued)

Why do you approach Ex-Im Bank for support? Please indicate the approximate frequency with which each of the following challenges or needs arise, as well as a typical region or situation that presents such a challenge/need.

[Note: When the survey is being completed on-line, if the cursor is placed over the question further explanation of that question will "pop up." The more detailed explanations are found in the "Part 2 Attachment."]

2.

Challenge/Need	%	Typical Region or Situation
Face competition from companies that receive ECA support:	_____	_____
Find a lack of useful private market financing available:	_____	_____
Need continuing U.S. government involvement:	_____	_____
Other (Please identify):	_____	_____
Other (Please identify):	_____	_____

PART 3 – EXPERIENCE WITH EX-IM BANK AS COMPARED TO FOREIGN ECAs

Using the guide below, please grade Ex-Im Bank as it compares to other ECAs in the following categories:

[Note: When the survey is being completed on-line, if the cursor is placed over an element in which Ex-Im Bank is to be graded then the definition of that element will "pop up." The definitions for each of the elements are found in the "Part 3 Attachment."]

A+	= Fully competitive. Consistently equal to the (or is the sole) ECA offering the most competitive position on this element. Levels the playing field on this element with the most competitive offer from any of the major ECAs.
A	= Generally competitive. Consistently offers terms on this element equal to the average terms of the typical major ECA. Levels the playing field on this element with the typical offer from the major ECAs.
A-/B+	= In between A and B
B	= Modestly competitive. Consistently offers terms on this element equal to the least competitive of the major ECAs. Does not quite level the playing field on this element with most of the major ECAs.
B-/C+	= In between B and C
C	= Barely competitive. Consistently offers terms on this element that are a notch below those offered by any of the major ECAs. Puts exporter at financing disadvantage on this element that may, to a certain extent, be compensated for in other elements or by exporter concessions.
C-/D+	= In between C and D
D	= Uncompetitive. Consistently offers terms on this element that are far below those offered by other major ECAs. Puts exporter at financing disadvantage on this element so significant that it is difficult to compensate for and may be enough to lose a deal.
F	= Does not provide program or element

CORE BUSINESS POLICIES AND PRACTICES

Ex-Im Bank's Cover Policy		**Interest Rate Provided by Ex-Im Bank**	
Scope of country risk		Loans (CIRR)	
Depth of non-sovereign risk		Insurance cover	
Breadth of availibity (e.g., restrictions)		Guarantee cover	

Ex-Im Bank's Risk Premia on		**Ex-Im Bank's Co-financing**	
Sovereign		# and utility of bilateral agreements	
Non-sovereign		Flexibility in one-off deals	

PART 3 (Continued)

Do you have any comments on Ex-Im Bank's cover policy, interest rates, risk premia or co-financing as they compare to those offered by other ECAs? For example, what core business policies and practices, if changed, would impact your competitiveness? Please be as specific as possible.

MAJOR PROGRAMS AND PERFORMANCE

Ex-Im Bank's Medium-Term Program

Pricing
% of cover
Risk capacity

Ex-Im Bank's Long-Term Program

Pricing
% of cover
Risk capacity

Ex-Im Bank's Large Aircraft Program

Interest rate
% of cover
Risk capacity

Ex-Im Bank's Project Finance

Core program features
Repayment flexibilities

Ex-Im Bank's Foreign Currency Guarantee

Availability of hard currency cover
Availability of local currency cover
Pricing

Ex-Im Bank's Support for Service Exports

Availability
Repayment terms

Do you have any comments on Ex-Im Bank's programs for medium- and long-term financing, large aircraft, project finance, or foreign currency guarantees as compared to those of other ECAs? Do you have any comments on the support Ex-Im Bank offers for services exports as compared to that offered by other ECAs? What programs or performance, if changed, would impact your competitiveness? Please be as specific as possible.

PART 3 (Continued)

Using the guide below, please indicate the competitive impact of the following economic philosophies and public policies on Ex-Im Bank's support.

+	Positive	Philosophy, policy or program has a positive impact on Ex-Im Bank's competitiveness (moves Ex-Im Bank's competitiveness grade up one notch)
*	Neutral	Philosophy, policy or program has a neutral impact on Ex-Im Bank's competitiveness (no impact on Ex-Im Bank's competitiveness grade)
-	Negative	Philosophy, policy or program has a negative impact on Ex-Im Bank's competitiveness (moves Ex-Im Bank's competitiveness grade down one notch)

ECONOMIC PHILOSOPHY

Tied aid [ ] Market windows [ ]

Do you have any comments on Ex-Im Bank's competitiveness with regard to tied aid or market windows? For example, have you seen competition supported by market windows or tied aid financing? Please be as specific as possible. You may also provide case specific data in Part 4.

[ ]

PART 3 (Continued)

PUBLIC POLICIES

Economic impact		Foreign content		Local costs	
PR 17/Shipping		Environment			

Do you have any comments on Ex-Im Bank's policies as they compare with other ECAs concerning economic impact, foreign content, local costs, shipping or the environment? Where other ECAs do not have a comparable public policy, such as economic impact and shipping, do you have comments on the impact of these public policies to Ex-Im Bank's competitiveness? For example, what public policies, if changed, would impact your competitiveness? Please be as specific as possible.

COMPETITIVENESS WEIGHTING

Now that you have graded Ex-Im Bank in several areas, please weight the overall importance of each of the four broad categories listed above to Ex-Im Bank's overall competitiveness. Please ensure that the sum of your weights equals 100%.

Core Business Policies and Practices	[0 – 100%)]
Major Programs and Performance	[0 – 100%]
Economic Philosophy	[0 – 100%]
Public Policies	[0 – 100%]

[Note: The online survey will ensure that the sum of the four percentage weightings equals 100%.]

PART 4 – EX-IM BANK PROJECTS

This template is provided as an opportunity for you to flesh out some of the grades that you gave in Part 3 by detailing any adverse impacts of Ex-Im Bank program features in specific transactions.

Ex.	Cost/Policy/ Program	ECA	Market	Project Description	Describe the competition you faced and the effect that it had on your business (eg forced to change sourcing; lost jobs; lower exports). If possible, please quantify.
	Cover	EDC	Iran	Power Plant	As a result of Ex-Im Bank's lack of cover for Iran, we were forced to source from outside the U.S. This resulted in a loss of over $100 million in U.S. export sales.
1					
2					
3					
4					
5					

PART 5 – GENERAL COMMENTS

This space is provided for you to express your views on the general competitive environment, trends of specific competitors, etc. You may also use this space to comment on aspects of Ex-Im Bank programs, particularly those not addressed in the above questions.

[FR Doc. 03–28135 Filed 11–7–03; 8:45 am]
BILLING CODE 6690–01–C

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; 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 November 13, 2003, 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: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. 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

—October 9, 2003 (Open)

B. Reports

- Corporate/Non-corporate Approvals
- Financial Institution Rating System (FIRS)—Sensitivity to Risk
- Capital Markets Specialist Program
- Human Development Investment Group—Update
- Rotational Assignments as Training and Development
- Loan Syndications—Update
- Rural Home Lending—Request for Regulatory Exception

C. New Business—Regulations

- YBS Proposed Rule—Reopening of Comment Period

Closed Session*

Reports

- Allowance for Loan Losses—Update

Dated: November 6, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–28292 Filed 11–6–03; 11:12 am]
BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. KSB Bancorp, Inc., Kaplan, Louisiana; to merge with Teche Bancshares, Inc., and thereby indirectly acquire Teche Bank and Trust Co., both of St. Martinville, Louisiana.

Board of Governors of the Federal Reserve System, November 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–28150 Filed 11–7–03; 8:45 am]
BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Anticipated Availability of Funds for Family Planning Services Grants

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

ACTION: Notice; correction.

SUMMARY: The Office of Population Affairs, OPHS, HHS published a notice in the **Federal Register** of Thursday, June 19, 2003, announcing the anticipated availability of funds for family planning services grants. This notice contained an error. One of the Populations/areas listed as available for competition was not available for competition in 2004. A correction notice was published in the **Federal Register** of Thursday, July 10, 2003. Since that time, the Population/area in question has become available for competition. This document reinstates the Population/area as competitive in 2004 and corrects the application due date and approximate grant funding date.

FOR FURTHER INFORMATION CONTACT: Susan B. Moskosky, 301–594–4008.

Correction

In the **Federal Register** of June 19, 2003, FR Doc. 03–15514, on page 36805, correct Table I to read:

TABLE I

States/Populations/areas to be served	Approximate		Approx. grant funding date
	Funding available	Application due date	
Region I			
Massachusetts—Central/Southeast	$1,468,500	09–01–03	01–01–04
Connecticut	1,793,300	09–01–03	01–01–04
Vermont	655,100	09–01–03	01–01–04
Maine	1,368,300	09–01–03	01–01–04
Region II			
Virgin Islands	719,300	05–30–04	09–30–04
Region III			
No competitive grants in 2004.			
Region IV			
Florida, Miami, Dade County and Florida Keys	525,300	05–30–04	09–30–04
Florida, Greater Orlando area (including Orange, Seminole, Osceola and Lake Counties)	525,300	05–30–04	09–30–04
Region V			
Illinois	7,599,00	09–01–03	01–01–04
Wisconsin	3,233,900	11–01–03	03–01–04
Michigan	6,916,100	12–01–03	04–01–04
Ohio	2,056,500	12–01–03	04–01–04
Illinois—Chicago Area	200,250	05–30–04	09–30–04
Region VI			
Texas	11,074,00	12–01–03	04–01–04
Region VII			
No competitive grants in 2004.			
Region VIII			
Colorado	2,887,200	09–01–03	01–01–04
North Dakota	807,000	03–01–04	07–01–04
Utah	1,084,000	03–01–04	07–01–04
Region IX			
Northern Mariana Islands	115,400	09–01–03	01–01–04
Arizona, Navajo Nation	638,300	03–01–04	07–01–04
Samoa	145,600	03–01–04	07–01–04
Nevada (excluding Washoe and Clark Counties)	600,350	03–01–04	07–01–04
Republic of the Marshall Islands	146,400	03–01–04	07–01–04
Region X			
Washington	3,616,000	09–01–03	01–01–04
Alaska, Municipality of Anchorage, Sitka Borough, Kenai Peninsula	665,500	03–01–04	07–01–04
Washington, Seattle Area	158,450	5–30–04	09–30–04

Dated: October 31, 2003.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 03–28198 Filed 11–7–03; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Craig H. Gelband, Ph.D., University of Florida: Based on the reports of two investigations conducted by the University of Florida (UF) (UF Reports) and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Craig H. Gelband, Ph.D., Associate Professor, Department of Physiology,

College of Medicine at UF, engaged in scientific misconduct in research. Publications and manuscripts containing the falsified data cited support from National Institutes of Health (NIH) grants, or falsified data was included in NIH grant applications, as follows:

- R29 HL52189–01A2, then R01 HL52189–05, "Regulation of renal vascular cells in hypertension".
- R01 HL56921, "AT1 receptor control in chronic hypertension".
- F32 HD08496, "Role of MNA V2.3 in uterine contraction".
- R01/R37 HL49254, "Ionic & pharmacological regulation of vascular cells".
- F32 HL08531, "Hormonal regulation of renal artery ionci currents"
- P01 DK41315, "Regulatory mechanism in colonic motility-program project".
- R01 HL69034–01, "Mechanisms of cerebral resistance artery constriction."

Specifically, PHS found that:

I. Dr. Craig H. Gelband falsified data based on contractile tension recording in antisense experiments on the angiotensin enzyme (ACE), purportedly using renal arteriolar smooth muscle tension preparation:

A. by falsely labeling the tension recordings in Figures 5, 6, and 7 in a publication by Wang, H., Reaves, P.Y., Gardon, M.L., Keene, K., Goldberg, D.S., Gelband, C.H., Katovich, M.J. & Raizada, M.K. "Angiotensin I—converting enzyme antisense gene therapy causes permanent antihypertensive effects in the SHR." *Hypertension* 35[part 2]: 2002–208, 2000 (subsequently referred to as the "*Hypertension* 2000 paper #1"), when he had earlier reported the same contractile records as being from experiments on the angiotensin receptor (not the enzyme), in Figures 6, 7, and 8 of an earlier mini-review by Martens, J.R. & Gelband, C.H. "Ion channels in vascular smooth muscle: Alterations in essential hypertension." PSEBM 218:192–200, 1998 (subsequently referred to as the *PSEBM* paper);

B. by falsifying three of the four sets of the mean data that were in fact the same for both the F0 and F1 mean data in Figures 5 and 6 of the *Hypertension* 2000 paper #1. Dr. Gelband also dishonestly provided the institution with the falsified/fabricated tables of the mean data and the associated false standard error values as evidence that he had conducted the experiments for Figures 5 and 6; and

C. by falsifying EC_{50} values in Table 1 in NIH grant application HL52189–05; the EC_{50} values had been interpolated from the falsified mean and SEM data shown in Figures 5 and 6 in the *Hypertension* 2000 paper #1.

II. Dr. Gelband falsified data in the reporting of research, misrepresenting current/voltage (I/V) data to be results from totally different experimental models or preparations in six publications (including one manuscript "In-Press") and in NIH grant application HL52189–05, specificaliy:

A. as Figure 1A, in Gelband, C.H., Wang, H., Gardon, M.L., Keene, K., Goldberg, D.S., Reaves, P., Katovich, M.J., Raizada, M.K. "Angiotensin 1-converting enzyme antisense prevents altered renal vascular reactivity, but not high blood pressure, in spontaneously hypertensive rats." *Hypertension* 35 [part 2]:209–213, 2000 (subsequently referred to as the "*Hypertension* 2000 paper #2").

B. as Figure 2, in Martens, J.R., Fergus, D.J., Tamkun, M.M., England, S.K., Gelband, C.H. "Identification of voltage-gated K^+ channel genes contributing to the decreased renal arteriolar K^+ current in hypertension." *J. Biol. Chem* (MS M01389200), online, in press (subsequently referred to as the "*JBC* paper"). *J. Biol Chem Online* (submitted and withdrawn).

C. as Figure 4A, in Gelband, C.H. "Protein kinase C regulation of renal vascular Kv and Ca^{++} channels in hypertension." *Hypertension Online* paper, withdrawn (subsequently referred to as the "*Hypertension Online* paper").

D. as Figure 3, in Gelband, C.H., Reaves, P.Y., Evans, J., Wang, H., Katovich, M.J., & Raizade, M.K. "Angiotensin II Type 1 receptor antisense gene therapy prevents altered renal vascular calcium homeostasis in hypertension." *Hypertension* 33[part II]:360–365, 1999 (subsequently referred to as the "*Hypertension* 1999 paper").

E. as Figures 4A and 4B in Martens, J.R., Reaves, P.Y., Lu, D., Katovich, M.J., Berecek, K.H., Bishop, A.P., Raizade, M.K., & Gelband, C.H. "Preventions of renovascular and cardiac pathophysiological changes in hypertension by angiotensin II type 1 receptor antisense gene therapy." *Proc. Natl. Acad. Sci.* 95:2664–2669, 1998 (subsequently referred to as the "PNAS paper").

F. as Figure 5A, in Reaves, P.Y., Gelband, C.H., Wang, H., Yang, H., Lu, D., Berecek, K.H., Katovich, M.J., Raizada, M.K. "Permanent cardiovascular protection from hypertension by the AT1 receptor antisense gene therapy in hypertensive rat offspring." *Circ. Res.* 85:344–350, 1999 (subsequently referred to as the "*Circ. Res.* 1999 paper").

1. Dr. Gelband also falsified data in the proposing of research by submitting the above data as Figures 3, 14A, 14B, and 15 in NIH grant application HL52189–05.

III. Dr. Gelband falsified traces of potassium currents in Figure 4 of the *J. Biol. Chem* paper (*see* PHS Finding II) where they were claimed to have been recorded from smooth muscle cells from rats treated with antisense to potassium channels, and/or in Figure 3 of the *Hypertension Online* paper (*see* PHS Finding II) where they were claimed to have been records from rat renal cells treated with phorbol esters and PKC inhibitors. Furthermore, the potassium currents were recorded from neurons, not from smooth muscles as falsely reported in these publications.

Dr. Gelband falsified data in the proposing of research by submitting the falsified traces of potassium currents as Figure 9 in NIH grant application HL52189–05.

IV. Dr. Gelband falsified data by claiming in Figure 8 of NIH grant application HL52189–05 and in Figure 2 of the *Hypertension Online* paper (see PHS Finding II) to have generated in his laboratory Western blot data on protein kinase C isoenzymes in renal vascular smooth muscle cells, while in fact the data were actually from cultured neurons collected in another laboratory and published in Pan, S.J., Zhu, M., Raizada, M.K., Sumners, C., & Gelband, C.H. "Angiotensin II-mediated inhibition of neuronal delayed rectifier K^+ current: Role of protein kinase C-a." *American Journal of Physiology* 281:C17–C23, 2001 (subsequently referred to as the *AJP* paper).

V. Dr. Gelband falsified data by misrepresenting experimental traces he provided as the unnumbered topmost figure on Page 26 of NIH grant application HL69034–01, as being recordings showing effect of indolactam inhibition in posterior cerebral arteriolar smooth muscle cells, while the identical tracings had been published by Dr. Gelband as Figures 2C and 7D of the *AJP* paper (see PHS Issue 4), where they had been reported as being tracings from neuronal cells.

VI. Dr. Gelband falsified data in the unnumbered rightmost figure on Page 25 of NIH grant application HL69034–01, by misrepresenting the data as showing potential changes induced in cerebral arterial myocytes by IP3 and heparin, while the same data were published by Dr. Gelband as Figure 5C in a 1997 publication: Gelband, C.H. & Gelband, H. "CA^{2+} release from intracellular stores is an initial step in hypoxic pulmonary vasoconstriction of rat pulmonary artery resistance vessels."

Circulation 96:3647–3654, 1997 (subsequently referred to as the "*Circulation* paper") as representing changes in intracellular calcium concentration of pulmonary artery cells induced by ryanodyne and hypoxia.

VII. Dr. Gelband falsified electrophysiological records by reusing the same current-voltage trace as the resonse of renal vascular cells exposed for 2 seconds to Angiotensin II (Figure 4C) and to Caffeine (Figure 4B) on p. 124 of the publication Gelband, C.H. & Hume J.R. "$[Ca^{2+}]_I$ Inhibition of K^+ Channels in Canine Renal Artery. A Novel Mechanism for Agonist-Induced Membrane Depolarization." *Circulation Research* 77(1):121–130, 1995 (subsequently referred to as the "*Circ. Res.* 1995 paper").

Dr. Gelband also submitted the falsified data above in Figure 4 in NIH grant application R29 JL52189–01A2.

VIII. Dr. Gelband fabricated laboratory research records for four Western blot experiments during the investigation, withholding from the institution his associate's notebook from which he had removed four labeled autoradiographic films from separate and different experiments, and using the removed films to fabricate a laboratory notebook containing falsified Western blots, which he provided to UF as evidence that he had conducted the experiments under investigation.

The terms of this Agreement are as follows:

(1) Respondent agreed to exclude himself voluntarily from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as "covered transactions" as defined in the debarment regulations at 45 CFR part 76, for a period of ten (10) years, beginning on October 3, 2003.

(2) Respondent agreed to exclude himself voluntarily from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant, for a period of ten (10) years, beginning on October 3, 2003.

(3) Within 30 days of the effective date of this Agreement, Respondent agreed to submit letters of retraction to the following journals concerning the specified data in the listed articles:

A. *Hypertension* 2000 paper #1: Figures 5, 6, and 7 merited retraction. A retraction has been submitted relevant to this paper.

B. *Hypertension* 2000 paper #1: Figure 1A merited retraction. A retraction has been submitted relevant to this paper.

C. *JBC* paper: Figure 2 and Figure 4 merited retraction. It has already been withdrawn.

D. *Hypertension Online* paper: Figure 4A and Figure 3 merited retraction. It has already been withdrawn.

E. *Hypertension* 1999 paper: Figure 3 must be retracted.

F. *PNAS paper:* Figure 4A and 4B must be retracted.

G. *Circ. Res. 1999 paper:* Figure 5A must be retracted.

H. *Circ. Res. 1995 paper:* Figure 4C or 4B must be retracted.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 03–28197 Filed 11–7–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

The Board of Scientific Counselors (BSC), Agency for Toxic Substances and Disease Registry

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee and committee meetings.

Name: Board of Scientific Counselors, ATSDR.

Times and Dates: 1 p.m.–5:30 p.m., December 1, 2003; 8:30 a.m.–4:30 p.m., December 2, 2003.

Place: Hilton Atlanta Hotel, 255 Courtland Street, NE., Atlanta, Georgia 30303.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 100 people.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Secretary, and the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of science in ATSDR-supported research, emerging problems that require scientific investigations, accuracy and currency of the science in ATSDR reports, and program areas to emphasize or de-emphasize. In addition, the Board recommends research programs and conference support for which the Agency awards grants to universities, colleges, research institutions, hospitals, and other public and private organizations.

Matters To Be Discussed: The agenda items for the meeting will include, but are not limited to, an update and discussion on the consolidation of the National Center for Environmental Health (NCEH) and the Agency for Toxic Substances and Disease Registry (ATSDR); review of previous discussions for consolidating the Board of Scientific Counselors (BSC) for ATSDR and the Advisory Committee to the Director (ACD) for NCEH; a discussion on peer review background and process; introduction of the next two sessions on peer review; an overview of the National Exposure Registry; discussion of future role of BSC/ACD intramural program reviews, eligible programs for review, and program reviews in 2004; an overview of existing BSC and ACD subcommittees and working groups; review of the Community and Tribal Subcommittee Evaluation Report, Recommendations, and committee membership; discussion of the Social-Behavioral Science Workgroup's new strategic initiative; and a review of the Health Department Subcommittee on workforce development.

Agenda items are tentative and subject to change.

Contact Person for More Information: Robert Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/498–0003.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: November 4, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–28160 Filed 11–7–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0507]

Agency Emergency Processing Request Under OMB Review; Experimental Study of *Trans* Fat Claims on Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information is an experimental study of *trans* fat claims on foods to evaluate the effects of various possible disclosure requirements to help consumers

understand and apply *trans* fat claims that they might see on food products. The study is intended to estimate the communication effectiveness of these disclosure requirements in realistic label usage situations for a range of products that may bear *trans* fat claims.

DATES: Fax written comments on the collection of information by December 10, 2003. FDA is requesting approval of this emergency processing by December 10, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA is requesting emergency processing of this proposed collection of information under section 3507(j) of the PRA and 5 CFR 1320.13. The information is critical to the agency's mission of regulating food labeling and is needed prior to the expiration of the normal time periods for OMB clearance under the PRA regulations (5 CFR part 1320). Consumer education activities are needed to ensure the successful implementation of the regulation mandating disclosure of the *trans* fat amount on food label. Before these activities can be completed, it is necessary to resolve questions about possible accompanying disclosure requirements for *trans* fat nutrient content claims. Delays in resolving this issue will undercut the effectiveness of these activities and reduce the value of mandatory *trans* fat disclosure. For this reason, the use of normal clearance procedures would be likely to prevent or disrupt this collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

An Experimental Study of *Trans* Fat Claims on Foods

FDA is requesting OMB approval of an experimental study of *trans* fat claims on food products to help FDA's Center for Food Safety and Applied Nutrition formulate decisions and policies affecting labeling requirements for *trans* fat claims on foods. In the **Federal Register** of July 11, 2003 (68 FR 41507), FDA published an advance notice of proposed rulemaking entitled "Food Labeling: *Trans* Fatty Acids in Nutrition Labeling; Consumer Research to Consider Nutrient Content and Health Claims and Possible Footnote or Disclosure Statements." The document announced that the agency was seeking information about possible disclosure requirements to accompany nutrient content claims about *trans* fatty acids to help consumers make heart-healthy food choices. The proposed study is intended to evaluate the ability of several such disclosure requirements to enable consumer heart-healthy food choices in order to provide empirical support for possible policy decisions about the need for such disclosures and the appropriate form they should take.

FDA or its contractor will collect and use information gathered from shopping mall intercept and Internet panel samples to evaluate how consumers understand and respond to claims on products with differing fatty acid profiles and possible disclosure requirements with those claims. The distinctive features of Internet panel and shopping mall methodologies for the purpose of this study are that they allow for controlled visual presentation of study materials, experimental manipulation of study materials, and the random assignment of subjects to condition. Experimental manipulation of labels and random assignment to condition makes it possible to estimate the effects of the various possible disclosure statements label statements while controlling for individual differences. Random assignment ensures that mean differences between conditions can be tested using well known techniques such as analysis of variance or regression analysis to yield statistically valid estimates of effect size. By implementing the study in a large nationally representative consumer panel with 600,000 households or in a geographically diverse set of shopping malls, the generalizability of the findings to a large fraction of the general population is also ensured.

Participants will be adults, age 18 and older, who are recruited for a study about foods and food labels. Each participant will be randomly assigned to 1 of the 126 experimental conditions consisting of fully crossing 7 footnote disclosure conditions, 3 product types, 3 fatty acid profiles and 2 prior knowledge conditions.

Respondents will provide background information and respond to package labels that contain the variations of label statements to be tested. Key measures for the study are product perception questions about the labeled food product (expected health benefits, perceived nutrition ratings).

FDA will use the information from the study to evaluate regulatory policy options. The agency often lacks empirical data about how consumers understand and respond to statements they might see in product labeling. The information gathered from this study can be used by the agency to assess likely consumer responses to various disclosure requirements for nutrient content claims.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Survey	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Internet survey	2,520	1	2,520	.4	1,008
Total					1,008

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We anticipate that all statistical tests will collapse across the three product categories. We estimate that 20 subjects per cell, 2,520 subjects in all, will provide adequate power to identify small to medium size effects (i.e., r = .15 to .30) for all main effects and first order interactions with power = (1 - beta) well in excess of .80 at the .05 significance level. Power for second and third order interactions will necessarily be smaller, but even for third order interactions, statistical power will be =.80 at the .10 significance level.

Dated: November 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28194 Filed 11–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0506]

Agency Emergency Processing Request Under Office of Management and Budget Review; Experimental Study of Possible Footnotes and Cuing Schemes to Help Consumers Interpret Quantitative Trans Fat Disclosure on the Nutrition Facts Panel

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information is an experimental study of possible footnotes and cuing schemes to help consumers understand and apply quantitative *trans* fat information they might see on the Nutrition Facts panel (NFP) of a food product. The study is intended to estimate the communication effectiveness of these disclosure requirements in terms of the ability to help consumers make heart-healthy product decisions in realistic label usage situations for a range of products that will disclose quantitative *trans* fat information.

DATES: Fax written comments on the collection of information by December 10, 2003. FDA is requesting approval of this emergency processing by December 10, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA is requesting emergency processing of this proposed collection of information under section 3507(j) of the PRA and 5 CFR 1320.13. The information is critical to the agency's mission of regulating food labeling and is needed prior to the expiration of the normal time periods for OMB clearance under the PRA regulations, 5 CFR part 1320. Consumer education activities are necessary to ensure the successful implementation of the regulation mandating disclosure of the *trans* fat amount on food label. Before these activities can be completed, it is necessary to resolve questions about accompanying footnotes and cuing schemes. Delays in resolving this issue will undercut the effectiveness of these education activities and reduce the value of mandatory *trans* fat disclosure. For this reason, the use of normal clearance procedures would be likely to prevent or disrupt this collection of information.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Experimental Study of Possible Footnotes and Cuing Schemes to Help Consumers Interpret Quantitative Trans Fat Disclosure on the Nutrition Facts Panel (NFP)

FDA is requesting OMB approval of an experimental study of possible footnotes and cuing schemes to help consumers interpret quantitative *trans* fat disclosure on the NFP to help FDA's Center for Food Safety and Applied Nutrition formulate decisions and policies affecting labeling requirements for *trans* fat disclosure. In the **Federal Register** of July 11, 2003 (68 FR 41507), FDA published an advance notice of proposed rulemaking entitled "Food Labeling: Trans Fatty Acids in Nutrition Labeling; Consumer Research to Consider Nutrient Content and Health Claims and Possible Footnote or Disclosure Statements," stating that the agency is seeking information about whether it should consider statements about *trans* fat, either alone or in combination with saturated fat and cholesterol, as a footnote in the Nutrition Facts panel to enhance consumers' understanding about such cholesterol-raising lipids and how to use disclosed information on the label to make healthy food choices. The proposed study is intended to evaluate the ability of several possible footnotes and cuing schemes to enable consumer heart-healthy food choices in order to provide empirical support for possible policy decisions about the need for such requirements and the appropriate form they should take.

FDA or its contractor will collect and use information gathered from shopping mall intercept and Internet panel samples to evaluate how consumers understand and respond to possible footnotes and cuing schemes. The distinctive features of internet panel and shopping mall methodologies for the purpose of the study are that they allow for controlled visual presentation of study materials, experimental manipulation of study materials, and the random assignment of subjects to condition. Experimental manipulation of labels and random assignment to condition makes it possible to estimate the effects of the various possible footnotes and cuing schemes while controlling for individual differences between subjects. Random assignment ensures that mean differences between conditions can be tested using well-known techniques such as analysis of variance or regression analysis to yield statistically valid estimates of effect size. By implementing the study in a large nationally representative consumer panel with 600,000 households or in a geographically diverse set of shopping malls, the generalizability of the findings to a large fraction of the general population is ensured.

Participants will be adults, age 18 and older, who are recruited for a study about foods and food labels. Each participant will be randomly assigned to one of the 42 experimental conditions consisting of fully crossing seven

possible footnotes/cuing schemes, 3 product types, and 2 prior knowledge conditions.

FDA will use the information from the study to evaluate regulatory and policy options. The agency often lacks empirical data about how consumers understand and respond to statements they might see in product labeling. The information gathered from this study can be used to estimate consumer comprehension and behavioral impact of various footnotes and cuing schemes intended to enable better understanding of quantitative *trans* fat information.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of Survey	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Internet Survey	2,520	1	2,520	.4	1,004
Total					1,004

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate that 60 subjects per cell, 2,520 subjects in all, will provide adequate power to identify small to medium size effects (i.e., r =.15 to .30) for all main effects and first order interactions with power = (1 – beta) well in excess of .80 at the .05 significance level. Power for second and third order interactions will necessarily be smaller, but even for third order interactions, statistical power will be =.80 at the .10 significance level.

Dated: November 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28195 Filed 11–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0509]

Agency Emergency Processing Under Office of Management and Budget Review; Experimental Study of Health Claim Disclaimers on Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information is an experimental study of health claims on food product labels to evaluate the communication effectiveness of various possible labeling statements (i.e., disclaimers) to convey differing levels of scientific support for health claims. The study examines the communication effectiveness of disclaimers in realistic label use situations for a range of health claims and associated food products that may bear such health claims.

DATES: Fax written comments on the collection of information by December 10, 2003. FDA is requesting approval of this emergency processing by December 10, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301 827–1223.

SUPPLEMENTARY INFORMATION: FDA is requesting emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). The information is critical to the agency's mission of regulating food labeling. Currently FDA is operating under interim procedures for reviewing qualified health claims on conventional foods and dietary supplements ("Guidance for Industry and FDA: Interim Procedures for Qualified Health Claims in the Labeling of Conventional Human Food and Human Dietary Supplements," that published in the **Federal Register** of July 10, 2003 (68 FR 41387–41390)). This interim approach was necessitated by various developments since the passage of the Nutrition Labeling and Education Act (NLEA), including successful legal challenges based on the First Amendment. The interim procedures provide guidance to industry regarding how the agency will respond to qualified health claims until the agency can promulgate notice-and-comment rulemaking. However, guidance documents do not establish legally enforceable responsibilities and are intended only as recommendations.

The interim procedures strain the agency's limited resources for reviewing qualified health claims. Qualified health claims greatly increase the number of potential health claims and as a result the agency anticipates a far greater number of health claim petitions. The agency included criteria for prioritizing petitions in order to maximize the public health benefit of its interim qualified health claim procedure, which will necessitate delays for some petitions. The interim guidance also creates uncertainty for industry, since qualified health claims are permitted through a letter of enforcement discretion, and are not authorized through a regulation. This is likely to inhibit some companies from submitting petitions during the interim period. FDA prefers that this interim period be as short as possible.

Consumer data are important to the development of new regulations for health claims. A central consideration in the development of a new regulatory framework for qualified health claims is the importance of ensuring that such claims can be made in a way that is not misleading to consumers. The agency recognizes that it is unknown whether consumers can distinguish between differing levels of scientific support and there are no consumer data currently available to assess the effectiveness of wording options proposed for conveying the different levels. The interim guidance relies on limited prior experience under a temporary policy of enforcement discretion, using ad hoc health claim disclaimers.

Given the uncertainties and constraints inherent with interim guidance and the absence of relevant consumer data to address questions raised by the new approaches to health

claims under consideration, we are seeking emergency approval of the proposed study in order to provide needed consumer data in time to assist the agency in developing new regulations for qualified health claims.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Experimental Study of Health Claim Disclaimers on Foods

FDA is requesting OMB approval of an experimental study of health claims and disclaimers on food labels to help the Center for Food Safety and Applied Nutrition formulate decisions and policies affecting labeling requirements for qualified health claims. Several possible approaches to implementing this qualified health claim scheme that differ in terms of the specific language and form of disclaimers used to convey level of scientific certainty are evaluated in terms of the ability of the proposed approach to accurately convey the actual level of scientific uncertainty for the stated claim.

The recent report of the FDA Task Force (Consumer Health Information for Better Nutrition Initiative Task Force Final Report, July 10, 2003) describes a four-level rating scheme for evaluating petitioned claims (consisting of unqualified claims that meet the standard of significant scientific agreement as defined by NLEA and three levels of qualified claims supported by decreasing levels of scientific evidence). The proposed consumer research is designed to test approaches to conveying levels of scientific uncertainty through the use of disclaimers that are linked to this four-level rating scheme for petitioned health claims.

The proposed study is intended to evaluate the effectiveness of several possible options for communicating the strength of scientific evidence for a given health claim across a range of health claims of varying scientific certainty. The evidence should provide empirical support for possible policy decisions about the need for disclaimers to minimize consumers' misunderstanding and misapplication of qualified health claims and the optimal language and the form such disclaimers should take. The impact of disclaimers is examined across a range of measures that capture what is conveyed about the state of scientific certainty for the claim as well as the impact of the qualified health claim on attributions about the food product that displays the claim.

FDA will conduct an experimental study using shopping mall intercept samples. The mall intercept methodology allows controlled presentation of visual materials, experimental manipulation of study materials, and the random assignment of participants to experimental conditions. The experimental manipulation of label conditions and random assignment to conditions allows for statistical estimates of the effects of different approaches to conveying level of scientific support and allows quantitative comparisons of the effectiveness of different forms and wording options for health claim disclaimers. Random assignment ensures that mean differences between conditions can be tested using established techniques such as analysis of variance and multiple regression analysis to yield statistically valid estimates of effect size.

The study design is based on the controlled presentation of realistic product labels that carry health claims for four nutrient/disease health claims. The four health claims that are tested vary in terms of the degree of scientific evidence underlying the health claim. Label conditions consist of different forms and specific wordings for disclaimers that accompany the nutrient/disease health claim as well as various control conditions that assess how consumers view the product and the scientific evidence in the absence of an explicit health claim on the product label.

Participants will be recruited using standard mall intercept methods, implemented in 6 geographically dispersed shopping malls. Participants are adults, aged 18 and older who do half or more of the grocery shopping for their household. Each site will have the same number of replicates of the experimental design that include all counterbalancing factors.

Four different schemes for communicating strength of science are tested: Point-Counterpoint (claim, followed by disclaimer), Embedded language (disclaimer first), Report Card (A-D letter ratings) and Graphic (graphic device to illustrate the rating scheme). Each scheme adopts the four-level strength of science ranking system described in the Interim Guidance.

The study includes four control conditions, representing important types of label statements and label users that constitute benchmarks for assessing the direction and magnitude of effects due to communications about the strength of scientific evidence for the health claims: (1) "Tombstone" control with no nutrient content or health claim, (2) nutrient content claim, but no health claim, (3) "full information control" in which the participant is provided with a summary of the scientific evidence for the claim prior to observing food labels and (4) expert controls, based on separate information gathered from nutrition experts knowledgeable about the diet-disease relationship.

The key measures for this study are the perceived strength of science for the claim that is conveyed by the label condition and product perception questions about the labeled food product (expected health benefits, perceived nutrition ratings) that identify the practical impact of the product label.

FDA will use the information from this study to guide the development of regulatory policy options related to qualified health claims. The agency acknowledges the lack of empirical data about how consumers understand and respond to statements they see in product labeling. The information gathered in this study can be used by the agency to assess likely consumer responses to various options for qualifying health claims based on varied levels of scientific evidence.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1,920	1	1,920	.30	576

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The approaches and wording options for qualified health claims of central interest to the agency requires a complex experimental design. To ensure adequate power to identify differences, the minimum cell size is 60 participants. This will be sufficient to identify small to medium effects (i.e., r =.15 to .30) for all main effects and first order interactions with power = (1 – beta), well in excess of .80 at the .05 significance level.

Dated: November 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28196 Filed 11–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002P–0431]

Determination That Delcobese (Amphetamine Adipate, Amphetamine Sulfate, Dextroamphetamine Adipate, Dextroamphetamine Sulfate) Tablets and Capsules Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that Delcobese (amphetamine adipate, amphetamine sulfate, dextroamphetamine adipate, dextroamphetamine sulfate) tablets and capsules were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for generic versions of Delcobese tablets and capsules.

FOR FURTHER INFORMATION CONTACT: Aileen H. Ciampa, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162) (21 CFR 314.162)).

Under 314.161(a)(1) of the act (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

Delcobese (amphetamine adipate, amphetamine sulfate, dextroamphetamine adipate, dextroamphetamine sulfate) tablets (1.25 milligrams (mg), 2.5 mg, 3.75 mg, 5 mg) were the subject of approved ANDA 83–563. Delcobese (amphetamine adipate, amphetamine sulfate, dextroamphetamine adipate, dextroamphetamine sulfate) capsules (1.25 mg, 2.5 mg, 3.75 mg, 5 mg) were the subject of approved ANDA 83–564. Both ANDAs were submitted by Delco Chemical Co., but ownership was later transferred to Lemmon Co. Delcobese tablets and capsules were labeled for the following indications: (1) Narcolepsy; (2) behavioral syndrome characterized by hyperactivity, distractability, and impulsiveness in children (currently commonly known as attention deficit hyperactivity disorder or ADHD); and (3) exogenous obesity. Prior to Delcobese's discontinuation, FDA proposed to remove the exogenous obesity indication from the labeling of all drug products containing an amphetamine, including Delcobese products, and offered the application holders an opportunity for hearing (44 FR 41552, July 17, 1979). That notice is still pending. While it is pending, the exogenous obesity indication may not be approved for ANDAs relying on Delcobese tablets or capsules as their listed drug (21 CFR 314.127(a)(9)).

On February 22, 1985, Lemmon Co. notified FDA that Delcobese capsules had not been manufactured since March 1984. On June 4, 1990, FDA requested that Lemmon Co. withdraw ANDAs 83–563 and 83–564 because the marketing of both Delcobese capsules and tablets had been discontinued. On February 24, 1993, Lemmon Co. requested the withdrawal of ANDAs 83–563 and 83–564. Accordingly, FDA withdrew approval of the applications in a **Federal Register** notice (58 FR 27737, May 11, 1993). Delcobese was moved from the prescription drug product list to the "Discontinued Drug Product List" section of the Orange Book.

In a citizen petition submitted under 21 CFR 10.30 dated September 20, 2002 (Docket No. 02P–0431), as amended by a letter dated October 23, 2002, Sonnenschein Nath & Rosenthal requested that FDA determine whether Delcobese tablets and capsules were withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that Delcobese tablets and capsules were not withdrawn from sale for reasons of safety or effectiveness. The petitioners identified no data or other information suggesting that Delcobese tablets and capsules were withdrawn from sale as a result of safety or effectiveness concerns. FDA has independently evaluated relevant data, including postmarketing adverse event reports, but

has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness. Finally, an NDA for a similar amphetamine/dextroamphetamine salt combination was recently approved after the product was found to be safe and effective for the treatment of ADHD.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined above, Delcobese tablets and capsules, approved under ANDAs 83–563 and 83–564, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list Delcobese tablets and capsules in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. As a result, ANDAs that refer to Delcobese tablets and capsules may be approved by the agency for appropriate indications.

Dated: November 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28193 Filed 11–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0498]

Compliance Program Guidance Manual 7371.009; Bovine Spongiform Encephalopathy/Ruminant Feed Ban Inspections; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a compliance program guidance manual (CP) entitled "Bovine Spongiform Encepholopathy/Ruminant Feed Ban Inspections." This CP is intended to assist investigators in determining compliance with the FDA regulation prohibiting the use of specified animal proteins in ruminant feeds (21 CFR 589.2000). The purpose of this regulation is to prevent the establishment and/or amplification within the United States of bovine spongiform encephalopathy (BSE), a fatal degenerative nerve disease of cattle.

DATES: Submit written or electronic comments on the CP at any time.

ADDRESSES: Submit written requests for single copies of the CP to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Copies of the CP also may be downloaded to a personal computer with access to the Internet. The CVM home page includes a link to the CP and may be accessed at *http://www.fda.gov/cvm*. Submit written comments on the CP to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http:///www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the guidance document and the docket number found in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this compliance program: Neal Bataller, Center for Veterinary Medicine, HFV–230, Food and Drug Administration, 7500 Standish Pl., Rm. E441, Rockville, MD 20855, 301–827–0163, e-mail: *nbatalle@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On August 4, 1997, the ruminant feed ban regulation in § 589.2000 (21 CFR 589.2000) became effective. This regulation prohibits the use of certain proteins derived from mammalian tissues in the feeding of ruminant animals. The regulation is intended to prevent the establishment and/or amplification within the United States of BSE, a fatal degenerative nerve disease of cattle.

BSE is the bovine form of a group of uniformly fatal neurological diseases known as transmissible spongiform encephalopathies (TSEs). BSE appears to be spread through the feeding to cattle of protein derived from TSE-infected animal tissues. Specifically, epidemiologic evidence gathered in the United Kingdom suggests an association between BSE and the feeding to cattle of protein derived from sheep infected with scrapie, another TSE. BSE represents a public health concern based on the possible connection between BSE and a form of human TSE, new variant Creutzfeldt-Jacob disease (nv-CJD), that is believed to have resulted from people eating ruminant tissues infected with the BSE agent. BSE has had a devastating economic effect on the livestock industry in countries where it has been identified or suspected. BSE has not been diagnosed in the United States.

The regulation in § 589.2000 affects renderers, protein blenders, commercial animal feed manufacturers, distributors (including retailers), transporters of animal feed and feed ingredients, on-farm animal feed mixers, and ruminant feeders. Based on the acute need to prevent the entry and spread of BSE, FDA has set a goal of full compliance with the regulation. This CP is intended to assist in the conduct of inspections to enforce § 589.2000 and thereby minimize risk to human or animal health.

II. Significance of Guidance

This CP is being issued as a level 1 guidance consistent with our good guidance practices (GGPs) regulation in § 10.115 (21 CFR 10.115). It is being implemented immediately without prior public comment, under § 10.115(g)(2), because of the agency's urgent need to provide guidance and instructions to both agency and state investigators in conducting inspections under § 589.2000 for preventing the introduction and amplication of BSE in the United States. Such guidance is presently not available. However, under GGPs, FDA requests comments on the guidance and will revise the document, if appropriate. Comments will be considered by the agency in the development of future policy.

The CP represents the FDA's current thinking on the subject. It does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternative methods may be used as long as they satisfy the requirements of the applicable statutes and regulations.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management

between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Copies of the CP may also be downloaded to a personal computer with access to the Internet. The CVM home page includes a link to the CP and may be accessed at *http://www.fda.gov/cvm*.

Dated: November 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28192 Filed 11–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Pediatric Preclinical Testing Program.

Date: December 2, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28237 Filed 11–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee D—Clinical Studies.

Date: December 10–11, 2003.

Time: 8 AM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 10814.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Research Programs Review Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd., 8th Floor, Bethesda, MD 20892–8328, 301–496–9767, *wm63f@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28238 Filed 11–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Trauma and Burn.

Date: December 3–5, 2003.

Time: 8 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Loews Hotel, 4150 East Mississippi Avenue, Denver, CO 80246.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18B, Bethesda, MD 20892, 301–594–2848, *latkerc@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28229 Filed 11–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Preventing Complications of Cirrhosis with Antivirals.

Date: December 2, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dan Matsumoto, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8894, *matsumotod@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Kidney Development.

Date: December 11, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 1516 Aero Drive, Linthicum, MD 21090.

Contact Person: Dan Matsumoto, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8894, *matsumotod@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28230 Filed 11–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Master Contract for Preclinical Development.

Date: December 4–5, 2003.

Time: December 4, 2003, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Gaithersburg Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Time: December 5, 2003, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Gaithersburg Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–0695, *giarosik@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, Natural Institutes of Health, HHS)

Dated: November 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28231 Filed 11–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Training Grant Review.

Date: November 20, 2003.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, Rm 2155, Bethesda, MD 20892, 301–496–7966, *rb169n@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28232 Filed 11–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Administrative Resource for Biodefense Proteomic Centers.

Date: December 3–5, 2003.

Time: December 3, 2003, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Salon C, Gaithersburg, MD 20878.

Time: December 4, 2003, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Salon C, Gaithersburg, MD 20878.

Time: December 5, 2003, 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Salon C, Gaithersburg, MD 20878.

Contact Person: Vassil St. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 2102, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–2550, *vg8q@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, Natural Institutes of Health, HHS)

Dated: November 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28233 Filed 11–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, R21 Application.

Date: November 17, 2003.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Willco Building, 6000 Executive Blvd, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28235 Filed 11–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Trama, Burn and Perioperative Surgery.

Date: December 1, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building 45, Room 3AN12F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Helen R. Sunshine, PhD., Chief, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN12F, Bethesda, MD 20892, 301–594–2881, *sunshinh@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93821, Cell Biology and Biophysics Research; 93,859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28236 Filed 11–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Clinical Studies and Epidemiology Study Section.

Date: November 10–11, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN Fellowship Review Meeting.

Date: November 18–19, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301)–435–1164, *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, E. Coli Subtyping.

Date: November 18, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 10892, (Telephone Conference Call).

Contact Person: Diane L. Stassi, PhD, Scientific Review Administrator, IDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–435–2514, *stassid@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Urology SBIR/STTR Review.

Date: November 18, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB02(M): Sodium Sensing.

Date: November 18, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Nutrition and Metabolism.

Date: November 18, 2003.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044, *leszczyd@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 NMB (02) Neuroendocrinology of Sleep and Feeding Behavior.

Date: November 18, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbasg@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Candida Adherence.

Date: November 18, 2003.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, 301–435–1148, *wachtelm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Gene Regulation.

Date: November 18, 2003.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rolf Menzel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, (301) 435–0952, *menzelro@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–M 52R: PAR–03–032: Tissue Engineering Research Partnerships.

Date: November 18–19, 2003.

Time: 5 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, 301/435–1743, *sipej@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 11: Small Business: Biodefense Vaccines.

Date: November 19, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemical Sensess.

Date: November 19, 2003.

Time: 9 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cognitive Neuroscience: Computational.
Date: November 19, 2003.
Time: 11 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHA (03) M: Growth Factors and Myocardial Ischemia.
Date: November 19, 2003.
Time: 1:15 p.m. to 2:15 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Development and the Effects of Stress.
Date: November 19, 2003.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7184, Bethesda, MD 20892, 301–435–1260, *sosteka@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Therapy.
Date: November 19, 2003.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Morris I. Kelsey, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–2477, *kelseym@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN Fellowship Review Group B—Physiology, Pharmacology and Molecular Structure.
Date: November 20, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW, Washington, DC 20009.
Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, NeuroAIDS and other End-organ Diseases Study Section.
Date: November 20–21, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Hotel Embassy Row, 2015 Massachusetts Avenue NW, Washington, DC 20036.
Contact Person: Abraham P. Bautista, MS, MSC, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral and Clinical Neuroscience Fellowships.
Date: November 20–21, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin Grand, 2350 M Street, NW, Washington, DC 20037.
Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1785, *stuesses@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuroinformatics Research.
Date: November 20, 2003.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Research on Children Exposed to Violence.
Date: November 20–21, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, HOP: Review of SSPS Non-R01s.
Date: November 20, 2003.
Time: 9 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, Bethesda, MD 20892, (301) 435–3554.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 TPM 02M: Sytoplasmic Damage and Genotixity.
Date: November 20, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin L Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717, *padaratm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Apoptosis.

Date: November 20, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892, (301) 451–8754, *bellmar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Trypanosome Molecular Biology.

Date: November 20, 2003.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology: Signaling and Interferon Exposure.

Date: November 20, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–3565, *nigidas@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuroinformatic Research.

Date: November 20, 2003.

Time: 4 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Maryland Room, Bethesda, MD 20814.

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tobacco Documents Research.

Date: November 21, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 TPM (04)M: Mechanisms of Carcinogenesis.

Date: November 21, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, 301–435–1717, *padaratm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Leishmania Pathologies.

Date: November 21, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7804, Bethesda, MD 20892, 301–435–1150, *pollitisa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Epstein Barr Virus and Transcription.

Date: November 21, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301–435–1151, *pyperj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, LAM: Cognitive Processes.

Date: November 21, 2003.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, 301–435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome/Fibromyalgia Syndrome SEP (02).

Date: November 21, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301–435–1781, *th88q@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.983, National Institutes of Health, HHS)

Dated: November 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28234 Filed 11–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: General Admissions Application (Long and Short Forms) and Stipend Forms.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0007.

Abstract: Students use the following FEMA forms to apply to National Fire Academy and Emergency Management Institute courses:

a. FEMA Form 75–5, General Admissions Application, to admit applicants to courses and programs offered at National Emergency Training Center (NETC), MWEOC and various locations throughout the United States. Applicants complete FEMA Form 75–5 and send it to the Office of Admissions. NETC personnel use the application to *determine eligibility* for courses and programs offered by NFA and EMI.

b. FEMA Form 75–5a, General Admissions Application Short Form, to admit applicants to courses and programs offered at NETC, MWEOC, and various locations throughout the United States. Applicants use these forms only when NETC personnel *do not need to determine* eligibility for courses and programs offered by NFA and EMI. Both forms 75–5 and 75–5a are currently available electronically for downloading, filling out, and printing.

c. FEMA Forms 75–3 and 75–3A Student Stipend Agreement and Student Stipend Agreement (Amendment), respectively, will also be available to students electronically since it constitutes a part of the application and admission process for which forms 75–5 and 75–5a will be used.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, and State, local or tribal government.

Number of Respondents: 205,000.

Estimated Time per Respondent: FEMA Form 75–5, 9 minutes for the paper version and 10 minutes for the automated version; FEMA Form 75–5a, 6 minutes for the paper version and 8 minutes for the automated version; FEMA Form 75–3 and FEMA Form 75–3a, 2 minutes each.

Estimated Total Annual Burden Hours: 34,166 hours.

Frequency of Response: One-time.

Comments: Interested persons are invited to submit written comments on the proposed information collection to FEMA's Desk Officer at the Office of Management and Budget at e-mail address: *David_Rostker@omb.eop.gov* within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Contact Muriel B. Anderson, Chief, Records Management Branch at e-mail address: *InformationCollections@dhs.gov* to requests additional information or copies of the information collection.

Dated: November 4, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–28169 Filed 11–7–03; 8:45 am]

BILLING CODE 9110–07–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–46]

Notice of Proposed Information Collection: Comment Request; Application Submission Requirements—Section 811 Supportive Housing for Persons With Disabilities

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: January 9, 2004.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application Submission Requirements—Section 811 Supportive Housing for Persons with Disabilities.

OMB Control Number, if applicable: 2502–0462.

Description of the need for the information and proposed use: The collection of this information is necessary to the Department to assist HUD in determining an applicant's eligibility, and their ability to develop housing for persons with disabilities within statutory and program criteria. A thorough evaluation of an applicant's submission is necessary to protect the government's financial interest.

Agency form numbers, if applicable: HUD–50071, HUD–92016–CA, HUD–92041, HUD–92042, HUD–92043, HUD–2530, HUD–2880, HUD–2990, HUD–2991, HUD–424B, SF–424, SF LLL.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 10,741; the number of respondents is 260 generating approximately 260 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the responses varies from 10 minutes to 13 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: October 30, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–28144 Filed 11–7–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–12]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment Due Date: January 9, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Community Development Work Study Program.

OMB Control Number: 2528–0175 (exp. 10/31/03).

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for awards in this statutorily created competitive grant program and to monitor performance of grantees to ensure that they meet statutory and program goals and requirements.

Agency Form Numbers: HUD 424, HUD 424B, HUD 2880, HUD 2993, HUD 2994, HUD 30007, HUD 30013, HUD 30014, HUD 30015, HUD 96010–1.

Members of the Affected Public: Institutions of higher learning accredited by a national or regional accrediting agency recognized by the U.S. Department of Education, Area-Wide Planning Organizations (APO), and states.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on an annual and semi-annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	60	60	40	2400
Semi-Annual Reports	60	60	6	360
Final Reports	30	30	8	240
Recordkeeping	30	30	5	150
Total			59	3150

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: November 3, 2003.

Darlene F. Williams,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 03–28145 Filed 11–7–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: this notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Friday, November 14, 2003, Time 1:30 p.m. to 4 p.m.

Address: Raubsville Inn, 25 Canal Road, Easton PA 18042.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware & Lehigh National Heritage Corridor and State

Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton PA 18042, (610) 923–3548.

Dated: November 4, 2003.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 03–28156 Filed 11–7–03; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Fish and Wildlife Service

Habitat Management, Preservation, and Restoration Plan for the Suisun Marsh, Solano County, CA

AGENCY: Bureau of Reclamation and Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a programmatic environmental impact statement/environmental impact report (PEIS/EIR) and hold public scoping meetings.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) and Public Resources Code, Sections 21000–21178.1 of the California Environmental Quality Act (CEQA), the U.S. Fish and Wildlife Service (FWS) and Bureau of Reclamation (Reclamation), the co-lead Federal agencies, and the California Department of Fish and Game (DFG), the lead State agency, propose to prepare a joint PEIS/EIR. The PEIS/EIR will develop and analyze a regional plan that would outline the actions necessary in Suisun Marsh to preserve and enhance managed seasonal wetlands, implement a comprehensive levee protection/improvement program, and protect ecosystem and drinking water quality, while restoring habitat for tidal marsh-dependent sensitive species, consistent with the California Bay-Delta Program's strategic goals and objectives.

DATES: Three public scoping meetings will be held:

- Tuesday, November 25, 2003, 12–3 p.m. in Fairfield, CA.
- Thursday, December 4, 2003, 6–8:30 p.m. in Benicia, CA.
- Wednesday, December 10, 2003, 6–8:30 p.m. in Fairfield, CA.

In addition to the scoping meetings, a Suisun Marsh Science Workshop sponsored by the San Francisco Bay-Delta Science Consortium is being planned for the latter part of January 2004. Details on this workshop will be publicized when the schedule and location have been determined.

Written comments on the scope of the proposed Suisun Marsh Plan or issues to be addressed in the PEIS/EIR must be received on or before February 9, 2004.

Persons needing reasonable accommodations in order to attend and participate in the meetings must submit requests no later than 1 week before the meeting (*see* **SUPPLEMENTARY INFORMATION** section for further details).

ADDRESSES: Scoping meetings will be held at:

- Fairfield, CA, (November 25) Solano County Mosquito Abatement District, 2950 Industrial Court.
- Benicia, CA, Benicia Public Library, Dona Benicia Meeting Room, 150 East L Street.
- Fairfield, CA, (December 10) Solano County Office of Education, Pena Adobe Room, 5100 Business Center Drive.

Written comments on the scope of the proposed Suisun Marsh Plan or issues to be addressed in the PEIS/EIR should be sent to the California Department of Fish and Game, Attention: Ms. Laurie Briden, 4001 N. Wilson Way, Stockton, California 95205. Written comments may also be sent by facsimile to (209) 946–6355 or e-mailed to *lbriden@delta.dfg.ca.gov.*

FOR FURTHER INFORMATION CONTACT: Laurie Briden with DFG at (209) 948–7347 or via e-mail at *lbriden@delta.dfg.ca.gov,* or Dan Buford with FWS at (916) 414–6600 or via e-mail at *Daniel_Buford@fws.gov,* or Lee Laurence with Reclamation at (916) 978–5193 or via e-mail at *llaurence@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION: The Suisun Marsh is the largest contiguous brackish water wetland in California. It is an important wetland on the Pacific Flyway, providing food and habitat for migratory birds. This intricate mosaic of tidal wetlands, diked seasonal wetlands, sloughs, and upland grasslands comprises over 10 percent of the remaining wetlands in California and is an important part of the San Francisco Bay-Delta Estuary. The Suisun Marsh provides habitats for many species of plants, fish, and wildlife, in addition to wintering and nesting habitat for waterfowl on the Pacific Flyway. The Suisun Marsh is located within the Bay-Delta estuary. As a result, its water quality affects, and is affected by, California's two largest water supply systems, the Federal Central Valley Project and the State Water Project, and other upstream diversions. These factors have made the Suisun Marsh one of the most highly regulated wildlife habitat areas in California and, as such, the Marsh occupies a prominent place in the Bay-Delta Program, a joint State-Federal planning group formed to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta.

California Bay-Delta Authority and member agency managers with primary responsibility for actions in Suisun Marsh formed a Charter Group to develop an implementation plan for Suisun Marsh that would protect and enhance Pacific Flyway and existing wildlife values, endangered species, and water quality. Because the Suisun Marsh includes private lands, the Suisun Resource Conservation District (SRCD) also serves on the Charter Group to represent the interests of private landowners. Other Charter Group members include DFG, FWS, Reclamation, and the California Department of Water Resources (DWR). Other Bay-Delta Program participating agencies include the National Oceanic and Atmospheric Administration (NOAA) Fisheries and the U.S. Army Corps of Engineers.

The proposed Suisun Marsh Plan would be developed to balance the goals and objectives of the Bay-Delta Program, Suisun Marsh Preservation Agreement, and other management and restoration programs within the Suisun Marsh in a manner that is responsive to the concerns of all stakeholders and is based upon voluntary participation by private landowners. The proposed Suisun Marsh Plan would provide for simultaneous protection and enhancement of: (1) Pacific Flyway and existing wildlife values in managed wetlands, (2) endangered species recovery, and (3) water quality.

The PEIS/EIR would address the design, implementation, and maintenance of specific actions needed to achieve the Suisun Marsh Plan. The Suisun Marsh is that portion of San Francisco Bay downstream from the

Sacramento-San Joaquin River Delta and upstream from the Central San Francisco Bay. The Suisun Marsh falls into the Suisun Marshlands and Bay Ecological Management Unit of the Bay-Delta Program's Suisun Marsh and North San Francisco Bay Ecological Management Zone. The proposed Suisun Marsh Plan would serve as the Bay-Delta Program's regional implementation plan for the Suisun Marsh portion of the Suisun Marsh Ecological Management Zone. The Plan would address Bay-Delta Program implementation in the Suisun Marsh over the next 30 or more years with an emphasis on Bay-Delta Program Stage 1, formally defined as the first 7 years of Bay-Delta Program implementation.

The PEIS/EIR is expected to analyze the beneficial and adverse effects of implementing a Suisun Marsh Plan on environmental resources including: water quality, fisheries, wildlife, vegetation, special-status species, land use, land use development patterns, population, housing, economics, and public services (fire protection, vector control), cultural resources, air quality, noise, recreation, energy, visual impacts, and socioeconomic condition. Analysis in the PEIS/EIR would also determine if environmental justice issues are associated with the Suisun Marsh Plan. An initial review for the presence of Indian Trust Assets in Solano, Contra Costa, and San Joaquin Counties indicates that there are no trust lands or other assets in those counties held for federally recognized tribes. This review also indicates that there are no Public Domain Allotments (lands held in trust for individual Indians) near the vicinity of the Suisun Marsh Plan. The environmental effects of certain specific projects would also be analyzed at a site-specific level of detail in the PEIS/EIR, and would constitute the final CEQA or NEPA document for those projects. Specific projects proposed to be analyzed at the site-specific level include an amendment to the Suisun Marsh Preservation Agreement. The Plan would also present strategies to resolve permitting issues related to past and ongoing maintenance and management activities, and identify strategies to resolve other interagency conflicts related to the management of the Suisun Marsh. Specific alternatives to the proposed Suisun Marsh Plan have not been identified at this time and will be developed following scoping.

DFG is publishing a Notice of Preparation in accordance with CEQA.

Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact Dan Buford at (916) 414–6600 or TDD (800) 735–2922 as soon as possible. Information regarding this proposed action is available in alternative formats upon request.

It is Reclamation's practice to make comments in response to a Notice of Intent, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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 disclosure in their entirety.

Dated: October 8, 2003.

Frank Michny,

Regional Environmental Manager, Mid-Pacific Region, Bureau of Reclamation.

Dated: October 7, 2003.

Steve Thompson,

Manager, California/Nevada Operations Office, Fish and Wildlife Service.

[FR Doc. 03–27922 Filed 11–7–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on December 4, 2003, at the Islander RV Resort, 751 Beachcomer Blvd. in Lake Havasu City, Arizona. It will begin at 8 a.m. and conclude at 3 p.m. The agenda items to be covered include: Review of the September 17, 2003, meeting minutes; BLM State Director's Update on Statewide Issues; Presentations on Recreation Opportunities on the Lower Colorado River; Lake Havasu Fisheries Improvement Project, and new Wilderness Planning Guidance, Land Use Planning Updates; RAC Questions on Written Reports from BLM Field Office Managers; Field Office Rangeland Resource Team Proposals; Reports by the Standards and Guidelines, Recreation and Tourism, Public Relations, Land Use Planning, and Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11 a.m. on December 4, 2003, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Elaine Y. Zielinski,

Arizona State Director.

[FR Doc. 03–28155 Filed 11–7–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–014–2810–DU]

Notice of Availability of the Elko/Wells Resource Management Plans Proposed Fire Management Amendment, Environmental Assessment and Finding of No Significant Impact and Initiation of a 30-day Public Protest Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and initiation of public protest period for the Elko/Wells Resource Management Plans Proposed Fire Management Amendment.

SUMMARY: The Bureau of Land Management (BLM), Elko Field Office, gives notice of the availability of a Proposed Fire Management Amendment (Amendment) to the Elko/Wells Resource Management Plans (RMPs). The document, which includes an associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), is subject to a 30-day public protest period to the Nevada State Director by participants in the planning process. *See* **SUPPLEMENTARY INFORMATION** for filing and content requirements of a letter of protest.

The Proposed Amendment/EA/FONSI has been prepared to address current issues and provide long-term direction for fire management on lands administered by the BLM's Elko Field Office. The Elko District is located in northeastern Nevada, and includes Elko County and portions of Eureka and Lander counties.

DATES: Protests must be filed on or before December 10, 2003.

ADDRESSES: The Proposed Amendment/EA/FONSI may be obtained from the Elko Field Office at 3900 East Idaho Street, Elko, NV 89801. A protest letter must be addressed to the State Director, and be mailed to P.O. Box 12000, Reno, NV 89520–0006. For hand deliveries, the address of BLM's Nevada State Office is 1340 Financial Blvd., Reno, NV 89502–7147.

SUPPLEMENTARY INFORMATION: Planning and analysis for the Proposed Elko/Wells RMPs Fire Management Amendment and associated EA/FONSI follow regulations at 43 CFR part 1610 for the Federal Land Management and Policy Act of 1976 (43 U.S.C. 1610), and at 40 CFR part 1500–1508 for the National Environmental Policy Act of 1969, as amended (Pub. L. 91–90, 42 U.S.C. 4321 *et seq.*). Public scoping for preparation of the Amendment/EA was conducted in March 2000 (66 FR 20830–20831, April 25, 2001).

Amendment of the RMPs is needed due to recent above-normal wildfire seasons; concerns about critical habitat for wild horses; wildlife, and domestic livestock; implementation of the National Fire Plan; and increased interest from local publics, cooperators and interest groups. The major emphasis of the amendment is to provide a framework to:

a. Improve effectiveness of initial attack on fires that should be suppressed;

b. Increase options for vegetation management in advance of wildfires to reduce the scale, cost, and adverse impacts of large fires;

c. Minimize damage to other resources through coordinated planning in advance on suppression strategy and tactics based on each discipline involved; and

d. Lessen the impact of wildfire in habitat and public land-based sectors of the local economy (recreation, hunting, grazing);

Four alternatives for the amendment are described and analyzed in the EA. They were developed based on existing national, state, and local policy, as well as best available science and the desires of various affected interests:

Limited Suppression or Fire Use—This alternative significantly reduces the suppression response and associated costs necessary for wildfires. It assumes that most fires result in acceptable impacts on the landscape.

Full Suppression—This alternative would treat all wildfire as an undesirable event and assumes that effectiveness of initial attack is approximately 100 percent. Cost of this alternative would be highest of the considered alternatives.

Existing Management—This "no action" alternative has several elements of the first two, but places less emphasis on vegetation treatment, potential for fire use, or emerging issues for impacts on the landscape.

Proposed Action—BLM's "preferred" alternative includes a mix of management actions to increase preparedness for initial attack, treat fuels and use fire where appropriate to achieve resource benefits.

A draft Amendment/EA was provided to participants in the planning process for review and comment; this comment period ended November 15, 2002. The Proposed Amendment/EA/FONSI has been prepared based on input received.

Protest procedures in 43 CFR 1610.5–2 allow the public an opportunity to review BLM's proposed land use plan decision. Any participant in the planning process who has an interest that is or may be adversely affected may file a protest. The protester may raise only issues submitted for the record during the planning process. A letter of protest must be filed within 30 days of publication of this notice. The protest must be in writing and fulfill content requirements established in 43 CFR 1610.5–2(a)(2). The State Director must receive a protest letter as specified in the **DATES** and **ADDRESSES** sections of this notice. No extension of time to file a protest is allowed. Any letters from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in their entirety upon request.

The Proposed Fire Management RMP Amendment, EA, and FONSI is available from the BLM Elko Field Office, 3900 E. Idaho St, Elko NV 89801, telephone 775–753–0200. This document is being mailed to all interested parties who have provided comments or requested they be included the mailing list for this planning effort.

FOR FURTHER INFORMATION CONTACT:

Fire Management: Joe Freeland, Fire Management Officer, 775–753–0308.

Planning: Lorrie West, 775–753–0266.

David Stout,

Associate Field Manager.

[FR Doc. 03–28081 Filed 11–7–03; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1058 (Preliminary)]

Wooden Bedroom Furniture from China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1058 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of wooden bedroom furniture, provided for in subheading 9403.50.90 of the Harmonized Tariff Schedule of the United States (HTS),[1] that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by December 15, 2003. The Commission's views are due at Commerce within five business days thereafter, or by December 22, 2003.

For further information concerning the conduct of this investigation 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 and B (19 CFR part 207).

EFFECTIVE DATE: October 31, 2003.

FOR FURTHER INFORMATION CONTACT: Fred H. Fischer (202–205–3179 or *ffischer@usitc.gov*), 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.

[1] Subject merchandise may also be provided for in HTS subheadings 7009.92.50 and 9403.90.70.

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:

Background.—This investigation is being instituted in response to a petition filed on October 31, 2003, by the American Furniture Manufacturers Committee For Legal Trade, Washington, DC, and its individual members, and the Cabinet Makers, Millmen, and Industrial Carpenters Local 721, Whittier, CA.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 21, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred H. Fischer (202–205–3179 or *ffischer@usitc.gov*) not later than November 17, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 26, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: November 5, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–28227 Filed 11–7–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–035]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 17, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–391–394, 396–397, and 399 (Review) (Remand) (Ball Bearings from France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit Commissioners' views on remand to the United States Court of International Trade on or before December 2, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 6, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–28362 Filed 11–6–03; 2:21 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection: Comments Requested

ACTION: 30–day notice of information collection under review: COPS Tribal Resources Grant Program (TRGP) Hiring Progress Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 114, on page 35427 on June 13, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 10, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public

burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Title of the Form/Collection:* Tribal Resources Grant Program Hiring Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office of Community Oriented Policing Services (COPS).

Form Number: Not applicable.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* TRGP Hiring award recipients. *Other:* None.

Abstract: The currently approved collection instrument targets TRGP award recipients to gather data on officer positions awarded under the Tribal Resources Grant Program. The data will be used by the COPS Office to monitor the progress of the TRGP award recipients in implementing their grant and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of respondents is 200 will complete the form within approximately one-half hour.

(6) *An estimate of the additional public burden (in hours) associated with the collection:* The total estimated public burden is 100 hours annually.

FOR FURTHER INFORMATION CONTACT: Brenda Dyer, Deputy Clearance Officer Policy and Planning Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: October 30, 2003.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–28164 Filed 11–7–03; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection: Comments Requested

ACTION: 30-day notice of information collection under review: COPS Tribal Resources Grant Program (TRGP) Equipment and Training Progress Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 114, on page 35428 on June 13, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 10, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Title of the Form/Collection:* Tribal Resources Grant Program Equipment and Training Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office of Community Oriented Policing Services (COPS).

Form Number: Not applicable.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* TRGP Equipment/ Training award recipients. *Other:* None.

Abstract: The currently approved collection instrument targets TRGP award recipients to gather data on equipment purchased and/or training received under the Tribal Resources Grant Program. The data will be used by the COPS Office to monitor the progress of the TRGP award recipients in implementing their grant and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* This will be a targeted collection to 200 respondents. The estimated amount of time required for the average respondent to respond is half an hour.

(6) *An estimate of the additional public burden (in hours) associated with the collection:* The total estimated public burden is 100 hours annually.

FOR FURTHER INFORMATION CONTACT: Brenda Dyer, Deputy Clearance Officer Policy and Planning Staff, Justice Management Division, United States Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: October 30, 2003.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–28165 Filed 11–7–03; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 021–2003]

Privacy Act of 1974; Systems of Records

AGENCY: United States Trustee Program, Department of Justice.

ACTION: Notice of modifications to systems of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, the United States Trustee Program ("USTP"), Department of Justice, proposes to modify the following existing Privacy Act systems of records: JUSTICE/UST–001, "Bankruptcy Case Files and Associated Records" (previously published Sept. 23, 1999, at 64 FR 51557); JUSTICE/UST–002, "Trustee Files" (previously published Sept. 23, 1999 at 64 FR 51557); JUSTICE/UST–003, "U.S. Trustee Timekeeping System" (previously published July 26, 1999, at 64 FR 40392); and JUSTICE/UST–004, "United States Trustee Program Case Referral System" (previously published Sept. 23, 1999, at 64 FR 51557). In addition, JUSTICE/UST–999, "United States Trustee Appendix 1—List of Record Retention Addresses" (previously published Dec. 11, 1987, at 52 FR 47301), is being deleted, as it has been superseded by the USTP's Internet office locator (*www.usdoj.gov/ust*). The only modification to UST–001, UST–002, UST–003, and UST–004 is the addition of a new routine use, allowing disclosure of information to contractors.

DATES: These actions will be effective December 10, 2003.

FOR FURTHER INFORMATION CONTACT: For information regarding these changes, and for general information regarding USTP's Privacy Act systems, contact Anthony J. Ciccone, FOIA/PA Counsel, Executive Office for United States Trustees, at (202) 307–1399.

SUPPLEMENTARY INFORMATION: Since these Privacy Act systems of record were last published in the **Federal Register**, the "United States Trustee Appendix 1—List of Record Retention Addresses" (UST–999) has been superseded by the USTP's Internet office locator (*www.usdoj.gov.ust*). Consequently, UST–999 is being deleted as outdated. The new routine use for contractors is being added to systems UST–001, UST–002, UST–003, and UST–004 in accordance with standard Department of Justice language. The need for this routine use stems from new bankruptcy court rules slated to take effect on December 1, 2003, after which debtors' social security numbers (SSNs) and other personal identifiers will be redacted in public filings pursuant to the Judicial Conference's new "privacy policy." While the USTP has worked with the Judicial Conference to ensure that USTP offices will continue to receive debtors' SSNs and other personal identifiers, the offices need to share such information with USTP contractors, such as those performing debtor audits, in order to perform statutory bankruptcy oversight responsibilities under 28 U.S.C. 581 *et seq.* and 11 U.S.C. 101, *et seq.*

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility of the Act, requires a 40-day period in which to conclude its review of the new routine use. Therefore, please submit any comments by December 10, 2003. The public, OMB, and Congress are invited to submit comments to: Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, 1331 Pennsylvania Ave., NW., Washington, DC 20530 (1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress.

Dated: November 4, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

JUSTICE/UST–001

SYSTEM NAME:

Bankruptcy Case Files and Associated Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

These records may be disclosed to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

* * * * *

JUSTICE/UST–002

SYSTEM NAME:

Trustee File.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

These records may be disclosed to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

* * * * *

JUSTICE/UST–003

SYSTEM NAME:

U.S. Trustee Timekeeping System.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

These records may be disclosed to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

* * * * *

JUSTICE/UST–004

SYSTEM NAME:

United States Trustee Program Case Referral System.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

* * * * *

These records may be disclosed to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to

accomplish an agency function related to this system of records.

* * * * *

[FR Doc. 03–28200 Filed 11–7–03; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: Bulletproof Vest Partnership.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 68, Number 89, page 24763 on May 8, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 10, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments, or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile at (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility.

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

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

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

Overview of this information:

(1) *Type of information collection:* Revision of currently approved collection.

(2) *The title of the form/collection:* Bulletproof Vest Partnership.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None, Bureau of Justice Assistance, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: State, Local, or Tribal Governments. Other: None. Abstract: The Bureau of Justice Assistance (BJA) collects this information as part of the application for federal assistance process under the Bulletproof Vest Partnership (BVP) Program. The purpose of this program is to help protect the lives of law enforcement officers by helping states and units of local and tribal governments equip their officers with armor vests. An applicant may request funds to help purchase one vest per officer per fiscal year. Federal payment covers up to 50 percent of each jurisdiction's total costs. BJA uses the information collected to review, approve, and make awards to jurisdictions in accordance with programmatic and statutory requirements.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 6,500 respondents who will respond approximately 1 per year, for a total of 252 responses. Each response will require approximately 2 hours for new applicants and 1 hour for return applicants.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 8,000 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 31, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–28163 Filed 11–7–03; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–144]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration (NASA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the review procedures of the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted by December 3, 2003.

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: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Public Awareness/Opinion Survey for NASA.

OMB Number: 2700–.

Type of review: New collection.

Need and Uses: The analysis of this survey will position NASA to develop a strategy to effectively communicate Agency messages.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 1,800.

Responses Per Respondent: 1.

Annual Responses: 1,800.

Hours Per Request: 20 minutes.

Annual Burden Hours: 600.

Frequency of Report: Other (one time).

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–28228 Filed 11–7–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 26, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–03–17, 8 items, 8 temporary items). Files relating to Air Force legal assistance activities, including such records as representation letters, notary logs, notary appointment letters, and personal legal readiness briefings. Also included are electronic copies of records created using electronic mail and word processing.

2. Department of the Air Force, Agency-wide (N1–AFU–03–20, 2 items, 2 temporary items). Records relating to helicopter crewmember flight evaluations, including worksheets used to record evaluation results and to complete the Certificate of Aircrew Evaluation. Also included are electronic copies of records created using electronic mail and word processing.

3. Department of the Army, Agency wide (N1–AU–03–14, 2 items, 2 temporary items). Reports and other records relating to reviews of ammunition facilities at Army commands. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of the Army, Agency-wide (N1–AU–03–24, 2 items, 2 temporary items). Records relating to educational and developmental intervention services provided to children of eligible service members. Included are referral and eligibility documentation, evaluations, transition plans, and related information. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–03–2, 12 items, 11 temporary items). Records of the National Weather Service's Office of Hydrologic Development. Included are such records as unpublished reports and data on which published reports are based and hydrologic information background materials. Also included are data, system documentation, inputs, outputs, and backups associated with the NOAA Hydrologic Data System and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of published hydrologic reports on precipitation frequency and probable maximum precipitation studies.

6. Department of Defense, National Imagery and Mapping Agency (N1–537–03–18, 10 items, 8 temporary items). Records relating to continuity of

operations planning and other continuity planning. Also included are electronic copies of documents created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of files relating to joint planning and organizational planning. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Homeland Security, Transportation Security Administration (N1–560–03–15, 4 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with the internal and external correspondence of the agency's Administrator, Deputy Administrator, and Chief of Staff. Recordkeeping copies of these files are proposed for permanent retention.

8. Department of Homeland Security, Bureau of Immigration and Customs Enforcement (N1–563–04–1, 4 items, 4 temporary items). Inputs, outputs, master files, and documentation associated with the Student and Exchange Visitor Information System, an electronic system containing personal data used to track and monitor non-immigrant students, exchange visitors, and their dependents in the United States.

9. Department of the Treasury, Bureau of the Public Debt (N1–53–03–12, 5 items, 5 temporary items). Paper and microfilm inputs for the Special Purpose Securities System, electronic reports generated from this system, and Federal Housing Administration reports. Records relate to such matters as early redemption requests, redemption of time deposits, fund receipt reports, future and prior issues and payments, security rollovers, notices of assessments, payment summaries, and interest accruals.

10. Department of the Treasury, Air Transportation Stabilization Board (N1–56–03–9, 11 items, 4 temporary items). Routine correspondence and staff working papers relating to loan guarantee programs to assist air carriers for losses incurred as a result of the terrorist attacks on the United States that occurred on September 11, 2001. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of loan guarantee application files, decision memorandums and supporting documentation, loan agreements, decision letters, meeting minutes, press releases, and quarterly loan monitoring reports.

11. Department of Veterans Affairs, Veterans Health Administration (N1–15–02–6, 10 items, 10 temporary items). Paper and electronic records relating to the employment incentive scholarship program and the education debt reduction program. Records relate to participants in these programs as well as to non-selected applicants. Included are such files as applications, worksheets, payment summaries, and an electronic database used for tracking applications. Also included are electronic copies of records created using word processing and electronic mail.

12. Environmental Protection Agency, Agency-wide (N1–412–03–20, 3 items, 3 temporary item). Records relating to clearing persons and companies who require access to confidential business information. Also included are electronic copies of records created using electronic email and word processing.

13. National Archives and Records Administration, Government-wide (N1–GRS–04–1, 9 items, 8 temporary items). Addition to the General Records Schedules for records of temporary commissions, boards, councils, and committees. Included are such records as files relating to day-to-day administrative activities, web site records (except for records identified by NARA as historically valuable), and committee management records. Also included are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of files documenting the establishment, membership, policies, organization, deliberations, findings, and recommendations of these bodies are proposed for permanent retention.

14. Small Business Administration, Office of Business Development (N1–309–03–10, 6 items, 6 temporary items). Inputs, outputs, master files, documentation, and backups of the Small Disadvantaged Business Tracking System, an electronic system used to track the Small Disadvantaged Business certification process.

15. Social Security Administration, Office of Disability and Income Security Programs (N1–47–03–1, 26 items, 26 temporary items). Claim files and other records related to Title II (Retirement, Survivors and Disability Insurance) and Title XVI (Supplemental Security Income for the Aged, Blind and Disabled) of the Social Security Act. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

Dated: October 31, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–28176 Filed 11–7–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 10, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Applicant: Thomas A. Day, School of Life Sciences, Arizona State University, P.O. Box 874501, Tempe AZ 85287–4501.

Activity for Which Permit Is Requested

Take and Enter Antarctic Specially Protected Area. The applicant proposes to collect up to 100 seeds and 300 plants of *Deschampsia antarctic* (Antarctic hairgrass), and up to 100 seed capsules and up to 300 plants of *Colobanthus quitensis* (Antarctic pearlwort), as well as soil samples. This material will be used to study the effects of climate change (warming, altered precipitation and enhanced UV–B) on Antarctic plants and productivity of Antarctic terrestrial ecosystems. Seeds are needed to propagate material at the applicant's home institution for examining plant responses to climate change factors. Plants and soils are needed to examine how plant productivity and soil characteristics (*e.g.*, carbon pools) change along natural microclimate gradients representing differences in temperature and moister regime. Plants and soils are also needed for transplant in the lab at Palmer Station where temperatures, precipitation, and UV–B radiation will be manipulated around the plants in order to study their responses. Transported plants and soils will subsequently be harvested and returned to the applicant's home institution for chemical analyses.

Location

Biscoe Point (ASPA #139) and other islands in the vicinity of Palmer Station, Anvers Island.

Dates

December 1, 2003 to August 31, 2006.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–28224 Filed 11–7–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Business and Operations Advisory Committee; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Business and Operations Advisory Committee (9556).

Date/Time: December 2, 2003; 2 p.m. to 4 p.m. (e.s.t.)

Place: National Science Foundation, 4201 Wilson Boulevard, Room 525–II, Arlington, VA.

Type of Meeting: Open—Teleconference. Please contact Joan Miller (below) for a dial-in number.

Contact Person: Joan Miller, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; (703) 292–8200.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

Agenda: December 2, 2003. Discussion of NSF's Business Analysis study.

Dated: November 5, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–28223 Filed 11–7–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *www.nsf.gov/home/pubinfo/advisory.htm*. This information may also be requested by telephoning 703/292–8182.

Dated: November 5, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–28222 Filed 11–7–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–09472]

Notice of Consideration of Request for License Termination of Department of Veterans Affairs Medical and Regional Office License and Release of Its Facility in Wichita, Kansas Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request to terminate Byproduct Material License No. 15–15618–01.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351; telephone (630) 829–9870 or by e-mail at *pjl2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to Department of Veterans Affairs Medical and Regional Office (VA) Byproduct Material License No. 15–15618–01, to terminate the license and release its facility located at 5500 East Kellogg in Wichita, Kansas, for unrestricted use.

The NRC staff has prepared an Environmental Assessment (EA) in support of this licensing action, in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow the release of the licensee's Wichita, Kansas facility for unrestricted use. This license was approved for in-vitro research utilizing labeled compounds, such as H–3, C–14, P–32, and others. On June 6, 2003, the VA requested that the NRC release the facility for unrestricted use. The VA has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR part 20 for unrestricted release. The staff has examined VA's request and the information that the licensee has provided in support of its request, including the surveys performed by VA to demonstrate compliance with 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use," to ensure that the NRC's decision

is protective of the public health and safety and the environment. Based on its review, the staff has determined that the affected environment and the environmental impacts associated with the unrestricted use of the VA's facilities are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG–1496). The staff also finds that the proposed release for unrestricted use of the VA facility is in compliance with the 10 CFR 20.1402.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of VA's proposed license amendment to release the Wichita facility for unrestricted use. On the basis of the EA, the staff has concluded that the environmental impacts from the proposed action would not be significant. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an environmental impact statement is not warranted.

IV. Further Information

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," VA's request, the EA summarized above, and the documents related to this proposed action are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html*. These documents include VA's letter dated June 6, 2003, with enclosures (Accession No. ML032960318); and the EA summarized above (Accession No. ML033020066).

Dated at Lisle, Illinois, this 28th day of October 2003.

Christopher G. Miller,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 03–28184 Filed 11–7–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Receipt of Application for Renewal of Donald C. Cook Nuclear Plant, Units 1 and 2 Facility Operating License Nos. DPR–58 and DPR–74 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated October 31, 2003, from the Indiana Michigan Power Company, filed pursuant to Section 104b of the Atomic Energy Act of 1954, as amended, and 10 CFR Part 54, to renew Operating License Nos. DPR–58 and DPR–74 for the Donald C. Cook Nuclear Plant, Units 1 and 2. Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period. The current operating licenses for the D.C. Cook Nuclear Plant, Units 1 and 2, expire on October 25, 2014 and December 23, 2017, respectively. The D.C. Cook Nuclear Plant, Units 1 and 2, are pressurized-water reactors designed by Westinghouse Electric Corporation, and are located in Berrien County, Michigan. The acceptability of the tendered application for docketing, and other matters including an opportunity to request for a hearing, will be addressed in subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML033070179. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application is available on the NRC Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*, while the application is under review. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

The staff has also verified that a copy of the license renewal application for the Donald C. Cook Nuclear Plant has been provided to the Bridgman Public Library, at 4460 Lake Street, Bridgman, Michigan and the Maud Preston Palenske Memorial Library, at 500 Market Street, St. Joseph, Michigan.

Dated at Rockville, Maryland, this 4th day of November, 2003.

For the Nuclear Regulatory Commission.

John R. Tappert,

Acting Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–28185 Filed 11–7–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–02377]

Notice of Consideration of Amendment Request for Kaiser Aluminum and Chemical Corporation, Tulsa, Oklahoma, and Opportunity for Providing Comments and Requesting a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Consideration of Approval of a revision to the Decommissioning Plan for the Kaiser Aluminum and Chemical Corporation Facility in Tulsa, Oklahoma, and an Opportunity for a Hearing.

FOR FURTHER INFORMATION CONTACT: John T. Buckley, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6607, fax number (301) 415–5398.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering approval of a revision to the Phase 2 Decommissioning Plan (DP) for the Kaiser Aluminum and Chemical Corporation (Kaiser) Facility in Tulsa, Oklahoma. Decommissioning of the Kaiser facility is being conducted in two Phases. In Phase 1, Kaiser remediated the land adjacent to the Kaiser property. In Phase 2, Kaiser will remediate its facility. On May 25, 2001, Kaiser submitted the Phase 2 DP. The Phase 2 DP was noticed in the **Federal Register** on October 30, 2001(66 FR54792). NRC approved the Phase 2 DP on June 8, 2003.

On October 6, 2003, Kaiser submitted a request to revise Chapter 14 of the DP. The revision will correct an error in Chapter 14, which incorrectly identified the Average Derived Concentration Level ($ADCL_w$) as the acceptance criteria for the 14 acre pond parcel area of the site. Kaiser has stated that the revisions to Chapter 14 will not change the scope of the work in the approved DP.

Prior to approving the DP revision, NRC will make findings in accordance with the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity To Provide Comments

In accordance with 10 CFR 20.1405, the NRC is providing notice to

individuals in the vicinity of the site that the NRC is in receipt of a revision to the Phase 2 DP, and will accept comments concerning this proposed modification to the DP and its associated environmental impacts. Comments with respect to this action should be provided in writing within 30 days of this notice and addressed to John T. Buckley, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6607, fax number (301) 415–5398, e-mail: *jtb@nrc.gov*. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

III. Opportunity To Request a Hearing

Although Kaiser is no longer a licensee subject to subpart L, "Informal Hearing Procedures for Adjudication in Material Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Discretion is being exercised in this case because of: (1) The unusually large volume of soil to be removed from the site; (2) the significant complexity of this project; and, (3) the close proximity of the site to a major population center. Whether or not a person has or intends to provide comments as set out in Section II above, pursuant to Section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with Section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

2. By mail, telegram, or facsimile (301–415–1101) addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to <*hearingdocket@nrc.gov*>.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Kaiser Aluminum and Chemical Corporation, 9141 Interline Avenue, Suite 1A, Baton Rouge, LA 70809–1957, Attention: Mr. J. W. Vinzant and;

2. The NRC staff, by delivery to the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail, addressed to General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in Section 2.1205(h);

3. The requestor's area of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Further Information

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic reading Room at: *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS Accession No. for the license amendment request is ML032820302.

Dated at Rockville, Maryland, this 3rd day of November, 2003.

For The Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–28183 Filed 11–7–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Nuclear Fuel Services, Inc., Environmental Assessment and Issuance of Finding of No Significant Impact Related to Proposed Financial Assurance Exemption for the Blended Low-Enriched Uranium Preparation Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Finding of No Significant Impact and Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Kevin Ramsey, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington DC 20555–0001, telephone (301) 415–7887 and e-mail *kmr@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to NRC Materials License SNM–124 to exempt Nuclear Fuel Services (NFS) from the financial assurance requirements in 10 CFR 70.25(f) for the proposed Blended Low-Enriched Uranium Preparation Facility (BPF) in Erwin, Tennessee, and has prepared an Environmental Assessment (EA) in support of this action. Based upon the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate, and, therefore, an Environmental Impact Statement (EIS) will not be prepared.

II. Environmental Assessment

Background

The NRC staff has received an exemption request (Ref. 1), dated October 27, 2003, to exempt NFS from the provision in 10 CFR 70.25(f)(4) limiting the use of a letter of intent to government licensees only. NFS is a non-government licensee and wishes to use a letter of intent from the U.S. Department of Energy (DOE) to guarantee part of the funds for decommissioning the BPF. NRC has received a letter from DOE (Ref. 2), dated October 20, 2003, stating its intent to reimburse the actual costs of decommissioning the BPF within the limits stated in the letter. The purpose of this document is to assess the environmental consequences of the proposed exemption.

The NFS facility in Erwin, Tennessee is authorized under SNM–124 to manufacture high-enriched nuclear reactor fuel. NFS is constructing a new complex at the Erwin site to manufacture low-enriched nuclear reactor fuel. NFS has requested an amendment to authorize operations at the BPF that will prepare low-enriched uranium solutions for use in the new complex (Ref. 3). The BPF operations will be conducted within the existing complex because that facility is already authorized to handle high-enriched material. After the high-enriched material is downblended and converted to a low-enriched uranium solution, it will be transferred from the BPF to the new complex. NFS must provide financial assurance for decommissioning the BPF before operations can be authorized.

Review Scope

The purpose of this EA is to assess the environmental impacts of the exemption request. It does not approve the request. This EA is limited to the financial assurance of proposed BPF activities at the Erwin Plant. The existing conditions and operations for the Erwin facility were evaluated by NRC for environmental impacts in a 1999 EA related to the renewal of the NFS license (Ref. 4), and a 2002 EA related to another amendment request for the Blended Low-Enriched Uranium (BLEU) Project (Ref. 5). The proposed operations at the BPF were evaluated for environmental impacts in a 2003 EA related to the BPF amendment request (Ref. 6). This assessment will determine whether to issue a FONSI or to prepare an Environmental Impact Statement (EIS). Should the NRC issue a FONSI, no EIS will be prepared.

Proposed Action

The proposed action is to grant an exemption from the requirements in 10 CFR 70.25(f)(4) and authorize NFS to use a DOE letter of intent to provide part of the financial assurance for decommissioning the BPF.

Purpose and Need for Proposed Action

The BLEU Project is part of a DOE program to reduce stockpiles of surplus high-enriched uranium. DOE has entered into an interagency agreement with the Tennessee Valley Authority (TVA) to convert 7400 kilograms of high-enriched uranium to commercial reactor fuel for a TVA nuclear power reactor. Under the interagency agreement, DOE has assumed the obligation to reimburse TVA and its contractors for the actual decommissioning costs associated with processing the high-enriched uranium. The DOE letter of intent recognizes NFS as a TVA contractor under the interagency agreement and commits to reimbursing the actual decommissioning costs associated with processing the high-enriched uranium at NFS.

Alternatives

The alternatives available to the NRC are:

1. Approve the exemption request as submitted;

2. No action (*i.e.*, deny the exemption request).

Affected Environment

The affected environment for Alternatives 1 and 2 is the NFS site. A full description of the site and its characteristics is given in the 1999 EA related to the renewal of the NFS license (Ref. 1) and a 2002 EA related to another amendment request for the BLEU Project (Ref. 2). The NFS facility is located in Unicoi County, Tennessee, about 32 km (20 mi) southwest of Johnson City, Tennessee. The plant is about 0.8 km (0.5 mi) southwest of the Erwin city limits. The site occupies about 28 hectares (70 acres). The site is bounded to the northwest by the CSX Corporation (CSX) railroad property and the Nolichucky River, and by Martin Creek to the northeast. The plant elevation is about 9 m (30 ft) above the nearest point on the Nolichucky River.

The area adjacent to the site consists primarily of residential, industrial, and commercial areas, with a limited amount of farming to the northwest. Privately owned residences are located to the east and south of the facility. Tract size is relatively large, leading to a low housing density in the areas adjacent to the facility. The CSX railroad right-of-way is parallel to the western boundary of the site. Industrial development is located adjacent to the railroad on the opposite side of the right-of-way. The site is bounded by Martin Creek to the north, with privately owned, vacant property and low-density residences.

Effluent Releases and Monitoring

A full description of the effluent monitoring program at the site is provided in the 1999 EA related to the renewal of the NFS license (Ref. 4), a 2002 EA related to another amendment request for the BLEU Project (Ref. 5), and a 2003 EA related to the BPF amendment request (Ref. 6). The NFS Erwin Plant conducts effluent and environmental monitoring programs to evaluate potential public health impacts and comply with the NRC effluent and environmental monitoring requirements. The effluent program monitors the airborne, liquid, and solid waste streams produced during operation of the NFS Plant. The environmental program monitors the air, surface water, sediment, soil, groundwater, and vegetation in and around the NFS Plant.

Airborne, liquid, and solid effluent streams that contain radioactive material are generated at the NFS Plant and monitored to ensure compliance with NRC regulations in 10 CFR part 20. Each effluent is monitored at or just before the point of release. The results of effluent monitoring are reported on a semi-annual basis to the NRC in accordance with 10 CFR 70.59.

Airborne and liquid effluents are also monitored for nonradiological constituents in accordance with State discharge permits. For the purpose of this EA, the State of Tennessee is expected to set limits on effluents under its regulatory control that are protective of health and safety and the local environment. On October 10, 2002, the Tennessee Air Pollution Control Board issued a discharge permit for airborne effluents from the BPF.

Environmental Impacts of Proposed Action

The proposed action will not result in the release of any chemical or radiological constituents to the environment. In addition, the proposed action will not cause any adverse impacts to local land use, biotic resources, or cultural resources.

Environmental Impacts of No Action Alternative

Under the no action alternative, NFS would have to provide financial assurance for decommissioning the BPF using another method. Obtaining another funding mechanism would cause delays and increase the costs of NFS' contract obligations for the BLEU Project.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action are insignificant. Thus, the staff considers that Alternative 1 is the appropriate alternative for selection.

Agencies and Persons Contacted

On October 29, 2003, the NRC staff contacted the Director of the Division of Radiological Health in the Tennessee Department of Environment and Conservation concerning this request. On October 29, 2003, the Director responded that the Division of Radiological Health, Tennessee Department of Environment and

Conservation concurred with the draft EA.

The NRC staff has determined that consultation under Section 7 of the Endangered Species Act is not required because the proposed action is administrative in nature and will not affect listed species or critical habitat.

The NRC staff has determined that the proposed action is not a type of activity that has potential to cause effect on historic properties because it is administrative in nature. Therefore, consultation under Section 106 of the National Historic Preservation Act is not required.

References

Unless otherwise noted, a copy of this document and the references listed below will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room).

1. Nuclear Fuel Services, Inc., Letter to U.S. Nuclear Regulatory Commission, "Request for Exemption from 10 CFR 70.25(f) Requirements for Portions of the BLEU Preparation Facility at Building 333," October 27, 2003, ADAMS No. ML033030311.

2. U.S. Department of Energy, Letter to U.S. Nuclear Regulatory Commission, "Assurance of Funding for Decommissioning the Equipment and Facilities Associated with the BLEU Project at Nuclear Fuel Services, Inc. Erwin Site," October 20, 2003, ADAMS No. ML033010362.

3. Nuclear Fuel Services, Inc., Letter to U.S. Nuclear Regulatory Commission, "License Amendment Request for BLEU Preparation Facility," October 11, 2002, ADAMS No. ML023380210.

4. U.S. Nuclear Regulatory Commission, "Environmental Assessment for Renewal of Special Nuclear Material License No. SNM–124," January 1999, ADAMS No. ML031150418.

5. U.S. Nuclear Regulatory Commission, "Environmental Assessment for Proposed License Amendments to Special Nuclear Material License No. SNM–124 Regarding Downblending and Oxide Conversion of Surplus High-Enriched Uranium," June 2002, ADAMS No. ML021790068.

6. U.S. Nuclear Regulatory Commission, "Environmental Assessment and Finding of No Significant Impact for the BLEU Preparation Facility," September 17, 2003, ADAMS No. ML032390428.

III. Finding of No Significant Impact

Pursuant to 10 CFR part 51, the NRC staff has considered the environmental consequences of amending NRC Materials License SNM–124 to exempt NFS from the financial assurance requirements in 10 CFR 70.25(f) for the BPF. On the basis of this assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and the Commission is making a finding of no significant impact. Accordingly, preparation of an environmental impact statement is not warranted.

IV. Further Information

For further details, see the references listed above. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, the 3rd day of November 2003.

For the Nuclear Regulatory Commission.

Kevin M. Ramsey,

Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–28182 Filed 11–7–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 147th meeting on November 19–20, 2003, Dallas Ballroom D, Texas Station Hotel, 2101 Texas Star Lane, Las Vegas, Nevada.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Wednesday, November 19, 2003

10:30 a.m.–10:40 a.m.: Opening Statement (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate items of interest.

10:40 a.m.–11:10 a.m.: DOE Opening Remarks (Open)—The Committee will be welcomed and receive introductory comments from John Arthur, Deputy Director, Office of Repository Development, Department of Energy.

11:10 a.m.–12:15 p.m.: Yucca Mountain Program Status (Open)—The Committee will hear presentations by and hold discussions with representatives of DOE regarding the status of the development of the License Application, the Licensing Support Network, and the resolution of Key Technical Issues (KTI) including the DOE "bundling" process. In addition there will be an update on several items discussed during the Committee's 2002 visit to Nevada.

1:30 p.m.–4:30 p.m.: Repository Design Status (Open)—The Committee will hear presentations by and hold discussions with representatives of DOE regarding the surface facility design, pre-closure safety assessment, and other Yucca Mountain Repository design issues.

4:45 p.m.–5:30 p.m.: DOE Approach to Drift Degradation Analyses (Open)—The Committee will hear presentations by and hold discussions with representatives of DOE on the Department's approach to evaluating drift degradation within the Yucca Mountain geologic environment.

5:30 p.m.–6 p.m.: Stakeholder Interactions (Open)—The Committee will reserve this time for interactions with stakeholders and meeting participants.

Thursday, November 20, 2003

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:30 a.m.: Igneous Activity Status Report (Open)—The Committee will hear presentations by and hold discussions with representatives of DOE regarding the Igneous Activity Consequence Modeling Peer Review Recommendations and the DOE path forward.

9:30 a.m.–10 a.m.: Inyo County Carbonate Drilling Program Status (Open)—The Committee will hear presentations by and hold discussions with representatives of Inyo County (California) regarding its deep carbonate aquifer drilling program.

10:15 a.m.–10:45 a.m.: Nye County Early Warning Drilling Program Status (Open)—The Committee will hear presentations by and hold discussions with representatives of Nye County regarding the status of its early warning drilling program.

10:45 a.m.–11:30 a.m.: EPRI Workshop on Natural Analogues (Open)—The Committee will hear presentations by and hold discussions with representatives of the Electric Power Research Institute (EPRI) regarding its recent workshop on natural analogues and their potential applicability to Yucca Mountain repository programs.

12:45 p.m.–2 p.m.: Presentation by Affected Units of Local Government (Open)—The Committee will hear presentations by and hold discussions with representatives of affected units of local government and Native American Organizations regarding their views on the proposed high-level waste repository at Yucca Mountain.

2:15 p.m.–3 p.m.: Stakeholder Interactions (Open)—The Committee will reserve this time for interactions with stakeholders and meeting participants.

3 p.m.–5:45 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss possible reports on the Pre-Closure Safety Assessment Tool, Drift Degradation at Yucca Mountain, and Public Interactions.

5:45 p.m.–6 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 16, 2003 (68 FR 59643). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, Special Assistant (Telephone 301/415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: November 4, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–28180 Filed 11–7–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on November 19, 2003, Dallas Ballroom D, at the Texas Station Hotel, 2101 Texas Star Lane, Las Vegas, Nevada.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, November 19, 2003—8:30 a.m.–10:15 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: November 4, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–28181 Filed 11–7–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on November 21, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, November 21, 2003—8:30 a.m. until the conclusion of business.

The purpose of this meeting is to discuss the "LOCA failure analysis and frequency estimation" developed by the staff in response to the Commission's March 31, 2003, Staff Requirements Memorandum on recommendations for risk-informed changes to 10 CFR 50.46, "Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors." The

Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Michael R. Snodderly (Telephone: 301–415–6927) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted during the meeting.

Further information regarding this meeting can be obtained by contacting the Designated Federal Officials between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: November 4, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–28179 Filed 11–7–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension: Rule 12g3–2, OMB Control No. 3235–0119, SEC File No. 270–104. Rules 7a–15 thru 7a–37, OMB Control No. 3235–0132, SEC File No. 270–115. Rule 13e–1, OMB Control No. 3235–0305, SEC File No. 270–255

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 12g3–2 (OMB 3235–0119; SEC File No. 270–104) provides an exemption from Section 12(g) of the Securities Exchange Act of 1934 for foreign private issuers. Rule 12g3–2 is designed to provide investors in foreign securities with information about such securities and the foreign issuer. It estimated that 1,800 foreign issuers make submissions pursuant to Rule 12g3–2 annually and it takes approximately one burden hour per response for a total annual burden of 1,800 hours. It is estimated that 100% of the burden is prepared by the filer.

Rules 7a–15 through 7a–37 (OMB 3235–0132; SEC File No. 270–115) set forth the general requirements relating to applications, statements and reports that must be filed under the Trust Indenture Act of 1939 by issuers and trustees qualifying indentures under that Act for offerings of debt securities. The respondents are persons and entities subject to the Trust Indenture Act requirements. Rules 7a–15 through 7a–37 are disclosure guidelines and do not directly result in any collection of information. The Rules are assigned only one burden hour for administrative convenience.

Rule 13e–1 (OMB 3235–0305; SEC File No. 270–255) makes it unlawful for an issuer who has received notice that it is the subject of a tender offer made under 14(d)(1) of the Act and which has commenced under Rule 14d–2 to purchase any of its equity securities during the tender offer unless it first files a statement with the Commission containing information required by the Rule. This rule is in keeping with the Commission's statutory responsibility to prescribe rules and regulations that are necessary for the protection of investors. Public companies are the respondents. Rule 13e–1 submissions take approximately 10 burden hours to prepare and are filed by 20 respondents. It is estimated that 25% of 200 total burden hours (50 hours) is prepared by the company. The remaining 75% of the total burden is attributed to outside cost.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: October 30, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–28186 Filed 11–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48742; File No. SR–CHX–2003–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Trading of Nasdaq/NM Securities

November 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on October 31, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has requested a one-year extension of the pilot relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot amended CHX Article XX, Rule 37 and CHX Article XX, Rule 43. The pilot currently is due to expire on November 1, 2003. The Exchange proposes that the pilot remain in effect on a pilot basis through November 1, 2004. The text of the proposed rule change is available at the principal offices of the CHX and at the Commission. This proposed extension of the pilot does not alter the text of the pilot language, but simply extends the expiration date of the pilot through November 1, 2004.

[1] 15 U.S.C. 78s(b)(1).

[2] 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 proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has requested a one-year extension of the pilot relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot amends CHX Article XX, Rule 37 and CHX Article XX, Rule 43. The pilot currently is due to expire on November 1, 2003; the Exchange proposes that the amendments remain in effect on a pilot basis through November 1, 2004.

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[3] Among other things, these rules rendered the Exchange's BEST Rule guarantee (CHX Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (the "MAX" system).[4]

On January 3, 1997, the Commission approved, on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders for Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer disseminated pursuant to SEC Rule 11Ac1–1 (the "NBBO").[5] When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months of trading data. Due to programming issues, the pilot program was not implemented until April 1997. Six months of trading data did not become available until November 1997. As a result, the Exchange requested an additional three-month extension to collect the data and prepare the report for the Commission.

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.[6] The Exchange submitted the report to the Commission on January 30, 1998. Subsequently, the Exchange requested another three-month extension, in order to give the Commission adequate time to approve the pilot program on a permanent basis. On March 31, 1998, the Commission approved the pilot for an additional three-month period, until June 30, 1998.[7] On July 1, 1998, the Commission approved the pilot for an additional six-month period, until December 31, 1998.[8] On December 31, 1998, the Commission approved the pilot for an additional six-month period, until June 30, 1999.[9] On June 30, 1999, the Commission approved the pilot for an additional seven-month period, until January 31, 2000.[10] On January 31, 2000, the Commission approved the pilot for an additional three-month period, until May 1, 2000.[11] On May 1, 2000, the Commission approved the pilot for an additional six-month period, until November 1, 2000.[12] On November 15, 2000, the Commission approved the pilot for an additional one-year period, until November 1, 2001.[13] On November 1, 2001, the pilot was extended for an additional one-year period, until November 1, 2002.[14] On November 1, 2002, the pilot was extended for an additional one-year period, until November 1, 2003.[15] In light of the evolving nature of the Nasdaq market and unlisted trading of Nasdaq/NM securities, the Exchange now requests another extension of the current pilot program, through November 1, 2004. The Exchange is not requesting approval of any changes to the pilot in this submission.

Under the pilot program, specialists must continue to accept agency market orders[16] or marketable limit orders, but only for orders of 100 to 5099 shares in Nasdaq/NM securities. This threshold order acceptance requirement is referred to as the "auto acceptance threshold." Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. Specialists are required to automatically execute Nasdaq/NM orders in accordance with certain amendments to the pilot program that were approved by the Commission.[17]

The pilot program requires the specialist to set the MAX auto-execution threshold at 100 shares or greater for Nasdaq/NM securities. When a CHX specialist is quoting at the NBBO, orders for a number of shares less than or equal to the size of the specialist's quote are executed automatically (in an amount up to the size of the specialist's quote). Orders of a size greater than the specialist's quote are automatically executed up to the size of the specialist's quote, with the balance of the order designated as an open order in the specialist's book, to be filled in accordance with the Exchange's rules for manual execution of orders for Nasdaq/NM securities. Such rules

[3] *See* Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSER–87–2); see *also* Securities Exchange Act Release Nos. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) (order expanding the number of eligible securities to 1000).

[4] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. *See* CHX Rules, Art. XX, Rule 37(b). A MAX order that fits within the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST rule does not apply, but MAX system handling rules remain applicable.

[5] *See* Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997).

[6] See Securities Exchange Act Release No. 39512 (December 31, 1997), 63 FR 1517 (January 9, 1998).

[7] See Securities Exchange Act Release No. 39823 (March 31, 1998), 63 FR 17246 (April 8, 1998).

[8] See Securities Exchange Act Release No. 40150 (July 1, 1998), 63 FR 36983 (July 8, 1998).

[9] See Securities Exchange Act Release No. 40868 (December 31, 1998), 64 FR 1845 (January 12, 1999).

[10] See Securities Exchange Act Release No. 41586 (June 30, 1999), 64 FR 36938 (July 8, 1999).

[11] See Securities Exchange Act Release No. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000).

[12] See Securities Exchange Act Release No. 42740 (May 1, 2000) 65 FR 26649 (May 8, 2000).

[13] See Securities Exchange Act Release No. 43565 (November 15, 2000), 65 FR 71166 (November 29, 2000).

[14] *See* Securities Exchange Act Release No. 45010 (November 1, 2001), 66 FR 56585 (November 8, 2001).

[15] *See* Securities Exchange Act Release No. 46932 (November 29, 2002), 67 FR 72990 (December 9, 2002).

[16] The term "agency order" means an order for the account of a customer, but does not include professional orders, as defined in CHX Rules, Art. XXX, Rule 2, Interpretation and Policy .04. The rule defines a "professional order" as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[17] *See* Securities Exchange Act Release No. 44778 (September 7, 2001), 66 FR 48075 (September 17, 2001).

dictate that the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Orders for securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system generates an autoquote at an increment away from the NBBO for 100 shares.

When the specialist is not quoting a Nasdaq/NM security at the NBBO, an order that is of a size less than or equal to the auto execution threshold designated by the specialist will execute automatically at the NBBO price up to the size of the auto execution threshold. Orders of a size greater than the auto execution threshold will be designated as open orders in the specialist's book and manually executed, unless the order-sending firm previously has advised the specialist that it elects partial automatic execution, in which event the order will be executed automatically up to the size of the auto execution threshold, with the balance of the order to be designated as an open order in the specialist's book.

Whether the specialist is quoting at the NBBO or not, "oversized" orders, *i.e.*, orders that are of a size greater than the auto acceptance threshold of 5099 shares (as designated by the specialist), are not subject to the foregoing requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

2. Statutory Basis

The CHX believes that the proposed rule is consistent with section 6(b) of the Act,[18] generally, and section 6(b)(5) of the Act[19] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement of 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 Regarding 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 rule change has become effective pursuant to section 19(b)(3)(A) of the Act[20] and subparagraph (f)(6) of Rule 19b–4[21] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. At any time within 60 days of the filing of such 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.

The Exchange has requested that the Commission waive the 5-day pre-filing notification requirement and the 30-day operative delay. The Commission believes that waiving the 5-day pre-filing notification requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.[22] The Commission notes that waiver of the 5-day pre-filing requirement and acceleration of the operative date will prevent the Exchange's pilot program relating to the trade of Nasdaq/NM securities from lapsing, and will allow the current rules to remain effective.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4.

[22] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2003–35 and should be submitted by December 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–28149 Filed 11–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48744; File Nos. SR–NSCC–2003–19 and SR–DTC–2003–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; The Depository Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Consolidation of Settlement Processing Operations and to the Use of the Federal Reserve Banks' Net Settlement Service

November 4, 2003.

I. Introduction

On September 26, 2003, the National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR–NSCC–2003–19 and proposed rule change File No. SR–DTC–2003–11 pursuant to Section 19(b)(1) of

[23] 17 CFR 200.30–3(a)(12).

the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on October 17, 2003.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

II. Description

The NSCC and DTC proposed rule changes propose that NSCC and DTC consolidate their settlement processing operations. The NSCC proposed rule change proposes that NSCC require all its settling banks to use the Federal Reserve Banks' ("FRBs") Net Settlement Service ("NSS") to satisfy their end-of-day settlement obligations.[3]

1. Consolidated Settlement Processing Operation

Today, DTC and NSCC settlements are run on two separate systems each of which is fed throughout the day with debit and credit data generated by participant/member activities. At the end of the processing day, the data is summarized and reported by product category (*e.g.*, in the case of NSCC, continuous net settlement, mutual funds, envelope services, *etc.* and in the case of DTC, delivery orders, stock loans, dividends, redemptions, *etc.*) through the Participant Terminal System ("PTS") on separate DTC and NSCC screens. The data is netted separately at DTC and at NSCC to produce an aggregate debit or credit at each clearing agency.

Following the determination of final net numbers for each participant/member for each clearing agency, a participant/member's credit balance at one clearing agency is netted against any debit balance at the other ("cross-endorsement"). The settling banks subsequently authorize settlement for their customers in an "acknowledgement" process and then transmit or receive funds to or from DTC's account and to or from NSCC's subaccount at the Federal Reserve Bank of New York ("FRBNY").

In order to promote operating efficiencies, improve risk management, and lower transaction processing costs, DTC and NSCC are seeking to introduce a consolidated settlement processing operation. A consolidated settlement processing operation will provide participants/members with consolidated NSCC and DTC settlement reporting, a single point of access for both NSCC and DTC settlement information, and reduced settlement risk. This consolidation is intended to be operational only. It is not intended to affect the legal relationship that participants/members and their settling banks have with NSCC or DTC.

As part of the new consolidated settlement processing operation, DTC and NSCC participants/members and their settling banks will be provided with a single set of enhanced PTS functions. Each participant/member will be able to view its DTC and NSCC settlement activity and will be provided a consolidated end-of-day netted DTC/NSCC settlement obligation. A participant/member's debits and credits at DTC and at NSCC will be separately summarized in one consolidated activity statement which will show the final DTC and NSCC balances and the netted amount for each participant/member.

2. Net Settlement Service

To reduce settlement risk and to permit settling banks to settle their net-net debits at NSCC and at DTC with a single payment, NSCC is amending its procedures to require that NSCC settling banks satisfy their daily net-net debit balances at NSCC through the use of NSS. This requirement is consistent with DTC's requirement that its settling banks utilize NSS.[4]

As more fully described below, NSS will permit DTC, as NSCC's settlement agent, to submit instructions to have the FRB accounts of NSCC settling banks charged for their NSCC net-net debit balance. By centralizing DTC and NSCC's settlement processing and by adopting NSS as the payment mechanism, each settling bank's balance at NSCC (whether a net-net debit or a net-net credit) will also be aggregated or netted with its settlement balance at DTC resulting in only a single debit or single credit having to be made to the settling bank's FRB account. Utilization of NSS by NSCC members and their settling banks will eliminate the need for a settling bank to initiate a wire transfer in satisfaction of a net-net debit balance. This should reduce the risk a settling bank would be unable to meet its settlement obligations because of operational problems and should reduce the occurrences of late payment fees due to delays in wiring settlement funds.[5]

As part of requiring the use of NSS, NSCC is making certain technical corrections to assure that defined terms and other provisions are used consistently. Accordingly, NSCC's Rule 1 (Definitions and Descriptions) is being amended to (1) include a new definition of "settlement agent" as DTC will act as NSCC's settlement agent in collecting and paying out settlement monies and (2) set forth a definition of "net credit balance" which is currently used in Rule 12 (Settlement) and elsewhere in the Rules.

NSCC Rule 12 and Rule 55 (Settling Banks) are being amended to make clear that in those instances where NSCC permits a "settling member," "insurance carrier member," or "fund member" to settle other than through a settling bank, it will be deemed to have failed to settle if it fails to pay its "net debit balance."[6] In addition, rule language is being modified to make clear that settlement of monies will be effected in the manner provided for in NSCC's Procedures.

NSCC Procedure VIII (Money Settlement Service) is being amended to reflect the requirement that settling banks use NSS and to provide the procedures whereby settling banks that act as such for both NSCC and DTC ("common settling banks") will have their settlement balances at both clearing agencies aggregated or netted into a single payment or credit amount.

Prior to using NSS, settling banks will be required to sign with an FRB a "Settler Agreement" which incorporates a requirement that the settling bank agrees to the terms of the FRB's Operating Circular No. 12. Under Section 6.4 of Operating Circular No. 12, the settlement agent (*i.e.*, DTC acts as settlement agent for NSCC) has certain responsibilities regarding allocation among settling banks of a claim for indemnity by the FRB. The allocation of any such claim among NSCC's members would be conducted in a manner as is described in NSCC Procedure VIII, Section 4(iv). The signed Settler Agreement must be on the settling bank's letterhead, signed by an authorized signer recognized by the FRB, and submitted to the FRB through DTC as NSCC's settlement agent. Settling banks that also act as settling banks for DTC participants previously had to sign a Settler Agreement with the FRB designating DTC as their NSS settlement agent. Accordingly, these settling banks will not be required to

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 48614 (October 9, 2003), 68 FR 59834.

[3] On September 2, 2003, DTC implemented the requirement that all DTC settling banks use NSS. Securities Exchange Act Release No. 48089 (June 25, 2003), 68 FR 40314 (July 7, 2003) [File No. SR–DTC–2002–06].

[4] *Supra* note 3.

[5] Should NSS not be available for any reason, then settling banks are obligated to settle their NSCC and DTC obligations by wire transfer.

[6] "Net debit balance" as used with respect to a member, insurance carrier member, or fund member means the amount by which the member's, insurance carrier member's, or fund member's gross debit balance for a business day exceeds its gross credit balance on that business day.

sign new Settler Agreements to cover NSCC's NSS settlement. Instead, as provided in NSCC Procedure VIII, the Settler Agreements they provide to DTC for delivery to the FRB designating DTC as their NSS settlement agent will be deemed to include the settling bank's NSCC settlement obligations as well as its DTC settlement obligations.

As is currently required, each settling bank will be required to acknowledge its NSCC net-net balance at the end of the day. However, any settling bank that is an NSCC Member and settles solely for its own account may elect to not acknowledge its net-net settlement balance at the end of the day.[7] This option will not be made available to settling banks that settle for others because the acknowledgement process includes the option to refuse to pay for a participant for whom the settling bank provides settlement services. Unless a settling bank has elected not to acknowledge its net-net settlement balance as provided above, DTC will not send a settling bank's net-net debit balance to a FRB for collection until the settling bank has acknowledged its balance.

As NSCC's settlement agent, DTC will send a "preadvice" to each settling bank, notifying the settling bank that DTC is about to send its NSS transmission to the FRB. If a settling bank does not have sufficient funds in its FRB account to enable DTC, as settlement agent, to debit the full amount of its settlement balance or should NSS not be available to a settling bank for any reason, the settling bank will be obligated to wire all such amounts to DTC prior to the designated cut-off time.[8]

A new item 4 in NSCC Procedure VIII sets forth the netting and payment obligations among common settling banks, NSCC, and DTC. For each common settling bank, DTC, as settlement agent, will aggregate or net the net-net debit or net-net credit as applicable due by or due to such bank from or to NSCC and DTC. If the common settling bank owes a settlement debit to both clearing agencies, DTC will debit the FRB account the sum of the debit amounts. If the bank is owed a settlement credit from both, DTC will wire the bank the sum of the credit amounts.

Where the common settling bank owes a debit to one clearing agency and is owed a credit from the other, the common settling bank will be obligated to pay the net amount of that sum (if a net debit) or be entitled to receive the net amount (if a net credit). The clearing agency which prenet owes the settlement credit to the common settling bank will pay the net credit difference to the other clearing agency if the other clearing agency has a prenet debit.[9] NSCC will implement its failure to settle procedures if any common settling bank that had a net-net debit to NSCC before aggregation or netting of such amounts with the common settling bank's DTC settlement balance fails to pay its aggregate NSCC/DTC net debit amount, referred to as the "consolidated settlement debit amount," in full by the time specified in NSCC and DTC's procedures.

III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[10] Because the proposed rule changes reduce the risk that a clearing bank will be late in fulfilling its settlement obligation, the proposed rule changes should better enable DTC and NSCC to fulfill their safeguarding obligations under Section 17A(b)(3)(F).

NSCC and DTC have requested that the Commission approve the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the notice of the filing because accelerated approval will give DTC and NSCC adequate time to notify their participants/members and to provide their participants/members with sufficient time to prepare for implementation of the proposed rule changes before year end.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–NSCC–2003–19 and SR–DTC–2003–11) be and hereby are approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–28148 Filed 11–7–03; 8:45 am]

BILLING CODE 8010–01–P

[7] Settling banks electing not to acknowledge their settlement balance will be required to sign an Acknowledgement Option Form. A common settling bank may not elect to opt out of acknowledging its balances unless it settles solely for its own account at both DTC and NSCC in which case that election will cover both the bank's NSCC and DTC net settlement balances.

[8] If a settling bank is experiencing extenuating circumstances and as a result needs to opt out of NSS for one business day and send its wire directly to DTC's FRBNY account for its debit balance, that settling bank must notify NSCC/DTC prior to acknowledging its settlement balance.

[9] For example, if NSCC owes the common settling bank $5 million, and DTC is owed $2 million by the common settling bank, NSCC will pay DTC $3 million dollars which DTC will pay to the common settling bank using NSS.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Social Security Ruling, SSR 03–03p.]

Titles II and XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Aged 65 or Older

AGENCY: Social Security Administration.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 03–03p. We are revising Social Security Ruling (SSR) 99–3p, Title XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Age 65 or Older (64 FR 33337, June 22, 1999). SSR 99–3p was confined to individuals who apply for disability payments under title XVI of the Social Security Act (the Act). In this revised ruling, we are adding provisions for individuals who apply for disability benefits under title II of the Act. Section 216(l) of the Act phases in gradual increases in the full retirement age from age 65 to age 67. As a result of these increases we will be processing some disability claims under title II of the Act for individuals who are aged 65 or older. Therefore, this Ruling clarifies the Social Security Administration's standards and procedures for the adjudication of disability and blindness claims for individuals aged 65 or older under titles II and XVI of the Act. This Ruling supersedes SSR 99–3p.

In addition to the revisions made to incorporate instructions for title II

claims we have updated SSR 99–3p. We have deleted the section that was titled "Special Rule for Determining Disability for Individuals Age 65 or Older Who Can Perform Medium Work But Who Are Illiterate in English or Unable to Communicate in English." We did this because those instructions actually applied to all individuals aged 60 or older-not just to individuals aged 65 and older. In addition, we are revising our regulations to make this clear. (See Notice of Proposed Rulemaking; Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Clarification of the Education and Previous Work Experience Categories in the Medical-Vocational Rules). We have also deleted obsolete information and made some minor revisions to the language of SSR 99–3p.

EFFECTIVE DATE: This ruling is effective on the date of its publication in the **Federal Register** (November 10, 2003).

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Regulations Officer, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1767.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.006 Supplemental Security Income)

Dated: November 4, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Policy Interpretation Ruling

This Ruling supersedes SSR 99–3p, Title XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Age 65 or Older (64 FR 33337, June 22, 1999).

Purpose: To clarify SSA's standards and procedures for the adjudication of titles II and XVI of the Social Security Act (the Act) disability and blindness claims for individuals aged 65 or older. In particular, this Ruling explains that:

- In general, the regulations and procedures for determining disability for adults who are under age 65 are used when determining whether an individual aged 65 or older is disabled.
- Adjudicators are required to consider any impairment(s) the individual has, including those that are often found in older individuals.
- If an individual aged 72 or older has a medically determinable impairment, that impairment will be considered to be "severe."
- If the individual's impairment(s) prevents the performance of his or her past relevant work (PRW), or if the individual does not have PRW, the adjudicator must consider two special medical-vocational profiles showing an inability to make an adjustment to other work before referring to appendix 2 to subpart P of 20 CFR part 404.
- Generally, adjudicators should use the rules for individuals aged 60–64 when determining whether an individual aged 65 or older can adjust to other work.
- Some individuals aged 65 or older may not understand, or be able to comply with, our requests to submit evidence or attend a consultative examination (CE). Therefore, adjudicators must make special efforts in situations in which it appears that an individual aged 65 or older may not be cooperating.

Citations: Section 5301 of Public Law (Pub. L.) 105–33, sections 402 and 431 of Pub. L. 104–193, as amended, sections 216(l), 223(a)(1), 223(d), 1614(a), 1616, 1619(b) and 1621(f)(1) of the Act, as amended; 20 CFR part 404, subpart P, appendices 1 and 2, §§ 404.1501–1599, and 20 CFR part 416, subpart I, §§ 416.901–416.923, 416.925–416.926, 416.927–416.986, 416.988–416.994, and 416.995–416.998.

Background: Section 216(l) of the Act phases in a gradual increase in the full retirement age from age 65 to age 67. These changes first affect individuals who were born in 1938; that is, who turn age 65 in 2003. By 2027, the incremental increases will be complete, and a full retirement age of 67 will be applicable to all individuals who were born in 1960 or later. These provisions do not change the age at which an individual can take early retirement at a reduced benefit amount, which remains at age 62. Under title II, an individual can establish entitlement to benefits based on disability or blindness until the month in which he or she attains full retirement age. Therefore, as a result of the increases in the full retirement age, we will be processing some disability claims under title II of the Act for individuals who are aged 65 or older.

On August 5, 1997, Pub. L. 105–33, the Balanced Budget Act of 1997, amended Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, and added additional alien eligibility criteria. Under the new criteria, "qualified" aliens who were lawfully residing in the United States on August 22, 1996, and who are disabled or blind as defined in section 1614(a) of the Act are eligible for benefits under title XVI provided all other eligibility requirements are met. Individuals can establish eligibility based on disability or blindness at any age, even on or after attainment of age 65.

In addition to qualified aliens, determinations of disability under title XVI also may be needed for other individuals aged 65 or older to determine:

- State supplements in some States (section 1616 of the Act);
- Whether the work incentive provisions of section 1619(b) of the Act are applicable; or
- Appropriate deeming of income and resources (section 1621(f)(1) of the Act; 20 CFR 416.1160, 416.1161, 416.1166a, and 416.1204).

Ruling: Evaluation Issues. In general, the regulations and procedures for determining disability for adults who are under age 65 are used when determining whether an individual aged 65 or older is disabled, except as provided later in this Ruling.

To determine if an adult is disabled as defined in the Act, adjudicators generally use the 5-step sequential evaluation process set out in 20 CFR 404.1520 and 416.920.

Step 1—Is the Individual Working? If the individual is working and the work is substantial gainful activity (see 20 CFR 404.1571–404.1576 and 416.971–416.976), we will find that the individual is not disabled regardless of his or her medical condition, age, education, or work experience.

Step 2—Does the Individual Have a Severe Impairment?

At step 2 of the sequential evaluation process, a determination is made about whether an individual has a medically determinable impairment and whether the individual's medically determinable impairment—or combination of impairments—is "severe." An individual who does not have an impairment or combination of impairments that is "severe" will be found not disabled.

An impairment(s) is considered "severe" if it significantly limits an individual's physical or mental abilities to do basic work activities. An impairment(s) that is "not severe" must be a slight abnormality, or a combination of slight abnormalities, that has no more than a minimal effect on the ability to do basic work activities. It is incorrect to disregard an impairment or consider it to be "not severe" because the impairment's effects are "normal" for a person of that age.

As in any claim, adjudicators must consider signs, symptoms, and laboratory findings when determining whether an individual aged 65 or older has a medically determinable impairment (see 20 CFR 404.1508 and 404.1528, and 416.908 and 416.928). The likelihood of the occurrence of some impairments increases with advancing age; *e.g.*, osteoporosis, osteoarthritis, certain cancers, adult-onset diabetes mellitus, impairments of memory, hypertension, and impairments of vision or hearing. Adjudicators are required to consider any impairment(s) the individual has, including impairments like the ones listed above that are often found in older individuals. It is incorrect to disregard any of an individual's impairments because they are "normal" for the person's age.

When an individual has more than one medically determinable impairment and each impairment by itself is "not severe," adjudicators must still assess the impact of the combination of those impairments on the individual's ability to function. A claim may be denied at step 2 only if the evidence shows that the individual's impairments, when considered in combination, are "not severe"; *i.e.*, do not have more than a minimal effect on the individual's physical or mental ability(ies) to perform basic work activities.

Special Rule for Individuals Applying for Title XVI Benefits Who Are Aged 72 or Older. Generally, we use step 2 of the sequential evaluation process as a "screen" to deny individuals with impairments that would have no more than a minimal effect on their ability to work even if we considered their age, education, and work experience. However, with advancing age, it is increasingly unlikely that individuals with medically determinable impairments will be found to have minimal limitations in their ability to do basic work activities. By age 72, separate consideration of whether an individual's medically determinable impairment(s) is "severe" does not serve the useful screening purpose that it does for individuals who have not attained age 72. Therefore, if an individual aged 72 or older has a medically determinable impairment(s), that impairment(s) will be considered to be "severe," and evaluation must proceed to the next step of the sequential evaluation process.

Step 3—Does the Individual Have an Impairment(s) That Meets or Equals an Impairment Listed in Appendix 1? When an individual has a severe impairment(s) that meets or medically equals the requirements for one of the impairments in the Listing of Impairments in appendix 1 to subpart P of 20 CFR part 404 and meets the duration requirement, the individual is disabled.

When Disability Cannot Be Found at Step 3—Assessing Residual Functional Capacity. When the individual does not have an impairment(s) that meets or equals the requirements for a listed impairment, the adjudicator is required to assess the individual's residual functional capacity (RFC). The RFC assessment is an adjudicator's finding about the ability of an individual to perform both physical and mental work-related activities despite his or her impairment(s). The assessment considers all of the individual's medically determinable impairments, including those that are "not severe," and all limitations or restrictions caused by symptoms, such as pain, that are related to the medically determinable impairment(s). The assessment is based upon consideration of all relevant evidence in the case record, including medical evidence and relevant nonmedical evidence, such as observations of lay witnesses of an individual's apparent symptomatology, or an individual's own statement of what he or she is able or unable to do.

When assessing RFC in an initial claim, an adjudicator should not find that an individual has limitations or restrictions beyond those caused by his or her medically determinable impairment(s). Limitations or restrictions due to factors such as age, height, or whether the individual has ever engaged in certain activities in his or her PRW (*e.g.*, lifting heavy weights) are, per se, not considered in assessing RFC. (See SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims.")

Step 4—Does the Individual Have an Impairment(s) That Prevents Him or Her from Performing Past Relevant Work (PRW)? The RFC assessment discussed above is first used at step 4 of the sequential evaluation process to determine whether the individual is capable of doing PRW. The rules and procedures we use to make this determination for individuals under age 65 are also applicable to individuals aged 65 or older. This includes consideration of whether the individual can perform his or her PRW as he or she actually performed it or as it is generally performed in the national economy. If the individual's PRW was performed in a foreign economy, we will generally consider only whether the individual can perform his or her PRW as he or she described it. However, if the work the individual did in a foreign economy also exists in the United States, we will consider whether he or she can perform the work as it is generally performed in the national economy. If the individual can perform his or her PRW, he or she will be found not disabled. (See SSR 82–40, "Titles II and XVI: The Vocational Relevance of the Past Work Performed in a Foreign Country.")

Step 5—Can the Individual Do Other Work? The last step of the sequential evaluation process requires us to determine whether an individual can do other work considering his or her RFC, age, education, and work experience.

Special Medical-Vocational Profiles Showing an Inability to Make an Adjustment to Other Work. If the individual's impairment(s) does preclude the performance of PRW, or if the individual does not have PRW, two special medical-vocational profiles must be considered before referring to appendix 2 to subpart P of 20 CFR part 404. The special profiles are discussed in SSR 82–63, "Titles II and XVI: Medical-Vocational Profiles Showing an Inability to Make an Adjustment to Other Work."

The "arduous unskilled physical labor" profile applies when an individual:

- Is not working;
- Has a history of 35 years or more of arduous unskilled physical labor[1];
- Can no longer perform this past arduous work because of a severe impairment(s); and

[1] Training, or isolated, brief, or remote periods of semiskilled or skilled work will not preclude a finding of arduous, unskilled work, if such training or experience did not result in skills that enable the individual to adjust to other work.

• Has no more than a marginal education (generally 6th grade or less).

The "no work experience" profile applies when an individual:

• Has a severe impairment(s);
• Has no PRW;
• Is aged 55 or older; and
• Has no more than a limited education (generally, 11th grade or less).

If either of these profiles applies, a finding of "disabled" must be made. This finding is made without considering the criteria in appendix 2 to subpart P of 20 CFR part 404.

Applying the Criteria in Appendix 2 to Subpart P of 20 CFR Part 404. If the special medical-vocational profiles are not applicable, we use the rules in appendix 2 to subpart P of 20 CFR part 404 to determine whether the individual has the ability to do other work. The highest age category used in appendix 2 is aged 60–64, "closely approaching retirement age." However, we have longstanding internal procedures that direct our adjudicators to use the rules for ages 60–64 when making determinations for individuals aged 65 or older at step 5.

Under those rules, individuals aged 65 or older who are limited to "sedentary" or "light" work will be found disabled unless their PRW provided them with transferable skills or they are at least a high school graduate and their education provides for direct entry into skilled work. As set out in §§ 201.00(f) and 202.00(f) of appendix 2, to find transferability of skills for individuals aged 65 or older who are limited to "sedentary" or "light" work, there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

Individuals aged 65 or older who can perform the full range of "medium" work are found disabled when they have no more than a limited education (including individuals who are illiterate in English or unable to communicate in English) and no PRW. Individuals aged 65 or older who can perform a full range of "medium" work are also found disabled when they have no more than a marginal education (including individuals who are illiterate in English or unable to communicate in English) and no PRW or their PRW is unskilled or their skilled or semi-skilled PRW provides no transferable skills.

Duration. As indicated earlier, the likelihood of the occurrence of some impairments, such as osteoporosis, osteoarthritis, certain cancers, adult-onset diabetes mellitus, impairments of memory, hypertension, and impairments of vision or hearing, increases with advancing age. Moreover, such impairments are more likely to be chronic than acute. Therefore, adjudicators must be especially careful before concluding that an impairment in an individual aged 65 or older will not meet the 12-month duration requirement.

Development Issues. Developing Allegations of Impairment(s). When obtaining the medical history of an individual aged 65 or older, it is important to be alert to and address allegations of impairments that are commonly associated with the aging process, such as osteoporosis, arthritis, loss of vision, hearing loss, and memory loss. Allegations may be raised in response to specific questions about the individual's impairment(s); *e.g.*, on Form SSA–3368-BK. However, adjudicators must also be alert to allegations raised in other evidence in the file. For example, questionnaires about activities of daily living may contain statements like "I have difficulty walking or climbing stairs because my legs hurt," "I can't clean my apartment because my back hurts," or "I don't read much anymore because I don't see well." These statements constitute allegations of impairment(s). Therefore, adjudicators must:

• Review the case file thoroughly to identify all allegations or other indications of impairment.
• Be aware that the medical evidence or third party statements can raise additional allegations.
• When contacting an individual aged 65 or older, be alert to statements indicating the presence of an impairment(s) commonly associated with the aging process.
• Consider all signs or symptoms indicative of an impairment(s), including those impairments caused by degenerative changes associated with the aging process.

Purchasing Medical Evidence. Our regulations, at 20 CFR 404.1512(f), 404.1517, 416.912(f) and 416.917, indicate that we will purchase CEs when the individual's medical sources cannot or will not give us sufficient medical evidence about the individual's impairment for us to determine if he or she is disabled. Sections 404.1519f and 416.919f further provide that we will purchase only the specific examinations and tests that we need to make a determination or decision. Due to the wide range of allegations contained in cases of individuals aged 65 or older, evidence addressing more than one body system may need to be purchased. In these situations, it is usually appropriate to purchase general medical examinations rather than examinations targeted at particular body systems. This will ensure that all allegations of impairment are evaluated, and will reduce the burden on the individual. For example, if the individual alleges back and knee pain, shortness of breath on exertion, and numbness and weakness in his or her arm, a general medical examination would usually be preferable to separate orthopedic, neurologic, respiratory, or cardiac examinations.

Failure to Cooperate. Individuals filing for benefits based on disability or blindness have certain responsibilities for furnishing us with, or helping us obtain, needed evidence. Our regulations at 20 CFR 404.1512(c), 404.1516, 404.1518, 416.912(c), 416.916, and 416.918 describe these responsibilities. However, due to factors such as possible language barriers or limited education, some individuals aged 65 or older may not understand, or be able to comply with, our requests to submit evidence or attend a CE.

If it appears that an individual aged 65 or older is not cooperating, adjudicators must take the following additional actions when the individual does not have an appointed representative, or when the appointed representative has asked us to deal directly with the individual.

If an individual aged 65 or older has not supplied evidence or taken an action we requested and still need, the adjudicator must:

• Contact the individual to determine why he or she has not complied with our request. If it appears that the individual needs personal assistance, including interpreter assistance, to complete forms, request field office assistance.
• Contact a third party (*i.e.*, someone other than the individual's representative), if one has been identified, about assisting the individual at the same time the adjudicator contacts the individual.

If an individual aged 65 or older did not attend a CE, the adjudicator must:

• Contact the individual to determine why he or she did not attend the CE.
• Make at least two attempts at different times on different days to contact the individual by telephone. (A busy signal does not constitute an attempt.)
• Send the claimant a call-in letter if telephone contact is not possible or successful.
• Contact a third party, if one has been identified, about assisting the claimant at the same time contact is attempted with the claimant.
• When contact is made with the individual or the third party, explain that the CE is for evaluation purposes

only and that no treatment will be required.

• Reschedule the CE if the individual had a good reason for not attending the prior CE (*e.g.*, he or she had transportation problems or was out of the country at the time of the CE) and indicates a willingness to attend a rescheduled CE.

Non-English-Speaking or Limited-English-Proficiency Individuals. For all the development issues discussed above, adjudicators must remember that we are responsible for obtaining the services of a qualified interpreter if the individual requests or needs one. This includes providing an interpreter at a CE if the CE provider is not sufficiently fluent in the individual's language.

Effective Date: This Ruling is effective on the date of its publication in the **Federal Register** (November 10, 2003).

Cross-References: SSR 82–40, "Titles II and XVI: The Vocational Relevance of the Past Work Performed in a Foreign Country"; SSR 82–61, "Titles II and XVI: Past Relevant Work—The Particular Job or the Occupation as Generally Performed"; SSR 82–62, "Titles II and XVI: A Disability Claimant's Capacity To Do Past Relevant Work, In General"; SSR 82–63, "Titles II and XVI: Medical-Vocational Profiles Showing an Inability To Make an Adjustment to Other Work"; SSR 85–28, "Titles II and XVI: Medical Impairments That Are Not Severe"; SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment Is Severe"; SSR 96–4p, "Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations"; SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims"; SSR 96–9p, "Titles II and XVI: Determining Capability to do Other Work—Implications of Residual Functional Capacity for Less Than a Full Range of Sedentary Work"; and Program Operations Manual System, sections DI 22505.015, DI 22510.018, DI 22510.019, DI 23515.010, DI 23515.025, DI 25010.001, SI 00502.142, and GN 00203.001.

[FR Doc. 03–28239 Filed 11–7–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4488]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held in Mexico City on November 24, 2003. The Commission will approve its budget and examine its course of study for FY 2004, in addition, it will meet with public affairs officers to review public diplomacy programs in the Western Hemisphere.

The Commission was reauthorized pursuant to Pub. L. 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000).

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include Barbara M. Barrett of Arizona, who is the Chairman; Harold C. Pachios of Maine; Ambassador Penne Percy Korth of Washington, DC; Ambassador Elizabeth F. Bagley of Washington, DC; Charles "Tre" Evers III of Florida; Jay T. Snyder of New York; and Maria Sophia Aguirre of Washington, DC.

For more information, please contact Matt Lauer at (202) 203–7880.

Matthew J. Lauer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 03–28221 Filed 11–7–03; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Vero Beach Municipal Airport, Vero Beach, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by The City of Vero Beach for Vero Beach Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is October 28, 2003.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 30.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Vero Beach Airport are in compliance with applicable requirements or part 150, effective October 28, 2003.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Vero Beach. The specific maps under consideration are "Existing Conditions 2003 Noise Exposure Contours" (Figure 9.1) and "Five-Year Forecast Conditions 2008 Noise Exposure Contours" (Figure 9.3) in the submission. The FAA has determined that these maps for Vero Beach Municipal Airport are in compliance with applicable requirements. This determination is effective on October 28, 2003.

FAA's determination on the airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the

applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, on October 28, 2003.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 03–28139 Filed 11–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Harmonization Initiatives

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This document announces a public meeting during which the Federal Aviation Administration (FAA) and other aviation authorities will accept input from the public on the Harmonization Work Program. The Harmonization Work Program is the means for aviation authorities to carry out a commitment to harmonize, to the maximum extent possible, the rules regarding the operation and maintenance of civil aircraft, and the standards, practices, and procedures governing the design, materials, workmanship, and construction of civil aircraft, aircraft engines, and other components. The purpose of this meeting is to provide an opportunity for the public to submit input to the Harmonization Work Program. This notice announces the date, time, location, and procedures for the public meeting.

DATES: The public meeting will be held on November 21, 2003 at 10:30 a.m. Written comments must be received no later than November 15, 2003.

ADDRESSES: The public meeting will be held at the Federal Aviation Administration Offices, 490 L'Enfant Plaza, Suite 3207, Washington, DC. Telephone (202) 267–3327, facsimile (202) 267–5075.

Persons who are unable to attend the meeting and wish to submit written comments may send comments using any of the following methods:

- Mail: Brenda Courtney, Federal Aviation Administration, Office of Rulemaking, ARM–200, 800 Independence Avenue, SW., Washington, DC 20591;
- Fax: 1–202–267–5075;
- Electronic mail: *brenda.Courtney@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the public meeting and questions regarding the logistics of the meeting should be directed to Brenda Courtney, Aircraft and Airport Rules Division, ARM–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3327, facsimile (202) 267–5075.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) and the Joint Aviation Authorities (JAA) will convene a meeting to accept input from the public on the Harmonization Work Program. The meeting will be held on November 21, 2003 at FAA Headquarters Offices, 490 L'Enfant Plaza, GSA Training Center Room, Suite 3207, Washington, DC, beginning at 10:30 a.m. The agenda will include:

- Debrief on Items from the Authorities-Only Meeting of the Harmonization Management Team
- Debrief on Operations/Maintenance/Licensing Harmonization Group (OHG)
- Debrief on FAA/JAA/TCCA Certification Codes Harmonization Group (CCHG)
- Review/Approbation of Minutes of March 3–4, 2003 HMT Meeting
- Any Other Business

Lodging Arrangements

A block of rooms has been reserved until Wednesday, November 12, 2003, at Lowe's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC. Telephone 1–202–484–1000, extension 5000 or 1–800–635–5065, fax 1–202–646–5060. The room rate for all attendees of the HMT meeting will be the U.S. Government lodging rate of $150 per night (single room), $175 per night (double room), excluding 14.5 percent tax. In making your reservation, identify yourself as attending the FAA/Joint Aviation Authorities meeting to get the meeting rate. Special conditions: Any cancellations to reservations must be made 24 hours in advance in order to avoid a no-show penalty of one night's room charges. At check-in, each guest will be asked to confirm his/her departure dates and in the event of an unscheduled early departure, there will be a charge of $50.

Participation at the Public Meeting

The FAA should receive requests from persons who wish to present oral and written statements at the public meeting no later than November 15, 2003. Statements and presentations should be provided on diskette or forwarded by e-mail to the person identified under the caption **FOR FURTHER INFORMATION CONTACT** to be made part of the official minutes of the meeting. Requests to present oral statements received after November 15 will be scheduled if time is available during the meeting.

Public Meeting Procedures

Persons who plan to attend the meeting should be aware of the following procedures established for this meeting:

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting, subject to availability of space in the meeting room.

2. The meeting may adjourn early if scheduled speakers complete their statements in less than the time scheduled for the meeting.

3. The FAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the FAA reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

4. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested at the above number listed under **FOR FURTHER INFORMATION CONTACT** at least 10 calendar days before the meeting.

5. Representatives from FAA and JAA will preside over the meeting.

6. The FAA and JAA will review and consider all material presented by participants at the meeting. Position papers or material presenting views or information related to proposed harmonization initiatives may be accepted at the direction of the FAA and JAA. The FAA requests that persons participating in the meeting provide copies of all materials to be presented. Copies may be provided to the audience at the discretion of the participant.

7. Statements made by the FAA and JAA are intended to facilitate discussion of issues or to clarify issues. Any statement made during the meeting by an official is not intended to be, and should not be construed as, a position of the FAA or JAA.

8. The meeting is designed to solicit public views and more complete information on proposed harmonization initiatives. Therefore, the meeting will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

Issued in Washington, DC, on November 5, 2003.

Brenda D. Courtney,

Manager, Aircraft and Airport Rules Division.

[FR Doc. 03–28241 Filed 11–5–03; 3:38 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice PFC approvals and disapprovals. In August 2003, there were seven applications approved. This notice also includes information on one application, approved in July 2003, inadvertently left off the July 2003 notice. Additionally, 24 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: City of North Bend and Port of Coos Bay, North Bend, Oregon.

Application Number: 03–06–C–00–OTH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $287.000.

Earliest Charge Effective Date: August 1, 2005.

Estimated Charge Expiration Date: February 1, 2009.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled air taxi/commercial operators utilizing aircraft having a seating capacity of less than 20 passengers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at North Bend Municipal Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level: Renovation of runway 13/31 lighting system, signage system, navigational aids, and backup generator; Drainage improvement renovations for runway 13/31 and the parallel taxiway system for runway 13/31; Reconstruction and extension of the existing parallel taxiway system for runway 13/31; Security enhancements; Environmental assessment for relocating taxiway C; Existing terminal renovation.

Decision Date: July 29, 2003.

For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Tupelo Airport Authority, Tupelo, Mississippi.

Application Number: 03–03–C–00–TUP.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $750,000.

Earliest Charge Effective Date: January 1, 2004.

Estimated Charge Expiration Date: January 1, 2013.

Class of Air Carriers not Required To Collect PFC's: None.

Brief Description of Project Approved for Collection and Use at a $4.50 PFC Level: Terminal expansion, renovation, and security enhancement.

Decision Date: August 8, 2003.

For Further Information Contact: David Shumate, Jackson Airports District Office (601) 664–9882.

Public Agency: City of Lebanon, New Hampshire.

Application Number: 03–05–C–00–LEB.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $63,774.

Earliest Charge Effective Date: November 1, 2003.

Estimated Charge Expiration Date: May 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators—non-scheduled/on-demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Lebanon Municipal Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level: Purchase snow removal equipment (loader); Hazard beacon winch acquisition; Security system upgrade; Environmental assessment; Purchase snow removal equipment (plow truck); Airport terminal building renovations; PFC administration.

Decision Date: August 19, 2003.

For Further Information Contact: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: City of Rapid City, South Dakota.

Application Number: 03–03–C–00–RAP.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,591,925.

Earliest Charge Effective Date: September 1, 2003.

Estimated Charge Expiration Date: July 1, 2006.

Classes of Air Carriers Not Required To Collect PFCs: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public

agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Rapid City Regional Airport.

Brief Description of Projects Approved for Collection and Use: General aviation ramp rehabilitation; runway safety area preliminary design; wildlife assessment; cargo/carrier ramp expansion; terminal apron lighting; runway 14/32 runway safety area correction projects; airport layout plan update; terminal building master plan; taxiway A realignment feasibility study; aircraft rescue and firefighting station sprinkler; friction measuring equipment; replace terminal revolving doors; pavement surface condition sensor; terminal roof rehabilitation; security system upgrade; runway 5/23 rehabilitation; taxiway B rehabilitation; passenger loading bridge (jetway); covered passenger walkway to terminal parking; terminal building hearing, ventilation, and air conditioning and sidewalk rehabilitation; covered boarding walkway.

Decision Date: August 18, 2003.

For Further Information Contact: Thomas T. Schauer, Bismarck Airports District Office, (701) 323–7380.

Public Agency: Airport Authority of Washoe County, Reno, Nevada.

Application Number: 03–07–C–00–RNO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $16,866,097.

Earliest Charge Effective Date: November 1, 2003.

Estimated Charge Expiration Date: November 1, 2005.

Class of Air Carriers Not Required To Collect PFCs: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Reno/Tahoe International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level: Terminal apron reconstruction design—phase 6; terminal apron reconstruction—phase 6; replace four jet bridges.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level: Second floor concourse build out; ground service equipment ramp pavement reconstruction; replace chiller number 2 mechanical system.

Brief Description of Project Approved for Collection at a $3.00 PFC Level: Southern central disposal facility.

Brief Description of Project Partially Approved for Collection at a $3.00 PFC Level: Airfield maintenance replacement facilities.

Determination: Partially approved. The FAA determined that several of the structures were not eligible in accordance with Appendix 1 of FAA Order 5100.38B, Airport Improvement Program (AIP) Handbook, (May 31, 2002).

Brief Description of Project Disapproved for Collection and Use: Geographic information system.

Determination: Disapproved. As a stand-alone project, the geographic information system does not meet the requirements of § 158.15(a) and/or § 158.17(b). Furthermore, this project does not meet the requirements of § 158.15(b)(2), that is, this project is not an AIP eligible planning project in accordance with paragraph 405u of FAA Order 5100.38B, AIP Handbook, (May 31, 2002).

Brief Description of Projects Disapproved for Collection: 3.6 acres wetlands mitigation bank.

Determination: Disapproved. This project does not meet the requirements of § 158.15(b)(1) in that it is not AIP eligible in accordance with paragraph 585c of FAA Order 5100.38B, AIP Handbook, (May 31, 2002).

10 acres wetlands mitigation bank.

Determination: Disapproved. This project does not meet the requirements of § 158.15(b)(1) in that it is not AIP eligible in accordance with paragraph 585c of FAA Order 5100.38B, AIP Handbook, (May 31, 2002).

Decision Date: August 21, 2003.

For Further Information Contact: Marlys Lingsch, San Francisco Airports District Office, (650) 876–2806.

Public Agency: Indianapolis Airport Authority, Indianapolis, Indiana.

Application Number: 03–04–C–00–IND.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $59,000.

Earliest Charge Effective Date: September 1, 2022.

Estimated Charge Expiration Date: October 1, 2022.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled, on-demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Indianapolis International Airport.

Brief Description of Project Approved for use at a $4.50 PFC Level: Midfield terminal.

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level: Preparation of PFC application and amendment (2003).

Decision Date: August 25, 2003.

For Further Information Contact: Gary Regan, Chicago Airports District Office, (847) 294–7525.

Public Agency: City of Chicago–Department of Aviation, Chicago, Illinois.

Application Number: 03–10–C–00–MDW.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,550,000.

Earliest Charge Effective Date: January 1, 2040.

Estimated Charge Expiration Date: February 1, 2040.

Class of Air Carriers Not Required To Collect PFC's: Air taxis.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chicago Midway International Airport (MDW).

Brief Description of Projects Approved for Collection at MDW and Use at Gary/Chicago Airport: Expand passenger terminal building; Hangar ramp construction.

Brief Description of Withdrawn Project: Drainage improvements.

Determination: Withdrawn by the public agency on June 3, 2003.

Decision Date: August 26, 2003.

For Further Information Contact: Philip M. Smithmeyer, Chicago Airports District Office, (847) 294–7335.

Public Agency: Pennsylvania State University, University Park, Pennsylvania.

Application Number: 03–03–C–00–UNV.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Earliest Charge Effective Date: August 1, 2003.

Estimated Charge Expiration Date: November 1, 2003.

PFC Level: $4.50.

Earliest Charge Effective Date: November 1, 2003.

Estimated Charge Expiration Date: November 1, 2008.

Total PFC Revenue Approved in This Decision: $1,510,612.

Class of Air Carriers Not Required To Collect PFC'S: Air taxis operating under Part 135 and filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at University Park Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level: Replace automated weather observing system III; Acquire aircraft rescue and firefighting vehicle (1500 gallon); Acquire snow removal vehicles; Remove obstructions runway 6/24 runway protection zone; Automated deicing containment facility; Conduct 5 year environmental assessment; Relocate runway end identifier lights system, runway 6; Update hold position markings; Rehabilitate and expand terminal apron; Security enhancements (conduct security study); Conduct terminal area plan; Conduct airport geographic information system, phase II; Modify terminal building; Acquire land for runway approach—Emberton; Acquire aircraft rescue and firefighting safety equipment (fire suits); Design and construct deicing facility; Acquire handicap passenger boarding device; Design and construct snow removal storage building; PFC administration.

Decision Date: August 28, 2003.

For Further Information Contact: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

AMENDMENTS TO PFC APPROVALS

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
96–01–I–04–BTV, Burlington, VT*	06/20/03	$23,579,704	$23,579,704	11/01/10	03/01/09
98–02–C–02–BTV, Burlington, VT*	6/20/03	40,000	40,000	12/01/10	04/01/09
00–03–C–02–BTV, Burlington, VT*	6/20/03	1,788,581	1,788,581	02/01/12	10/01/09
99–03–C–02–PLB, Plattsburgh, NY	07/31/03	7,264	7,090	02/01/99	12/01/98
98–05–C–03–MCO, Orlando. FL	08/01/03	111,734,000	113,965,696	01/01/01	03/01/01
99–06–C–02–MCO, Orlando, FL	08/01/03	95,772,673	86,619,348	05/01/03	04/01/03
00–07–C–01–MCO, Orlando, FL	08/01/03	174,364,294	187,429,617	04/01/08	08/01/08
02–09–C–01–MCO, Orlando, FL	08/01/03	219,494,000	222,974,000	02/01/17	09/01/17
99–03–C–02–JAN, Jackson, MS*	08/05/03	11,925,562	11,925,562	02/01/07	01/01/06
98–05–I–02–JAC, Jackson, WY	08/06/03	1,903,869	1,973,523	11/01/04	11/01/04
99–06–U–02–JAC, Jackson, WY	08/06/03	NA	NA	11/01/04	11/01/04
01–05–C–01–DLH, Duluth, MN	08/13/03	541,256	557,885	04/01/03	05/01/03
92–01–C–04–RSW, Fort Myers, FL*	08/14/03	244,799,120	156,035,674	12/01/15	03/01/11
93–02–U–02–RSW, Fort Myers, FL	08/14/03	NA	NA	12/01/15	03/01/11
94–03–U–01–RSW, Fort Myers, FL	08/14/03	NA	NA	12/01/15	03/01/11
97–04–U–01–RSW, Fort Myers, FL	08/14/03	NA	NA	12/01/15	03/01/11
99–02–C–02–CID, Cedar Rapids, IA	08/18/03	4,210,583	4,841,906	12/01/03	03/01/04
00–02–C–01–SBA, Santa Barbara, CA*	08/22/03	5,512,330	5,362,104	05/01/07	08/01/05
02–03–C–01–SBA, Santa Barbara, CA*	08/22/03	436,043	436,043	08/01/06	08/01/06
00–02–C–01–EKO, Elko, NV*	08/22/03	6,194,920	6,194,920	09/01/18	02/01/21
96–01–C–01–EWN, New Bern, NC*	08/28/03	10,681,398	10,681,398	05/01/22	11/01/24
98–02–U–01–EWN, New Bern, NC	08/28/03	NA	NA	05/01/22	11/01/24
92–01–C–03–UNV, University Park, PA	08/28/03	1,724,197	1,710,088	09/01/99	08/01/99
99–02–C–02–UNV, University Park, PA	08/28/03	1,597,102	1,227,852	10/01/04	08/01/03

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Burlington, VT, this change is effective on August 1, 2003. For Jackson, MS, this change is effective on October 1, 2003. For Santa Barbara, CA, Fort Myers, FL, Elko, NV, and New Bern, NC, this change is effective on November 1, 2003.

Issued in Washington, DC, on October 31, 2003.

Frank San Martin,

Acting Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 03–28140 Filed 11–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Additional Requirements: Aquila GmbH Engine Mount Connection Design Criteria and Winglets for the Aquila GmbH AT01 JAR–VLA Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of design criteria.

SUMMARY: This notice announces the issuance of the design criteria for (a) fire protection of the connection between the metal structure of an engine mount and composite airframe and (b) structural substantiation of the winglets for the Aquila GmbH AT01. These additional provisions addressing JAR–VLA (Joint Aviation Requirements-Very Light Aircraft) parts 865, 1191, and 445 are the same as those issued by the airworthiness authority for Germany, the Luftfahrt-Bundesamt (LBA), in the original certification of the aircraft. The airplane will be certificated under the provisions of 14 CFR part 21, §21.29, as a 14 CFR part 21, §21.17(b), special class aircraft, JAR–VLA, using the requirements of JAR–VLA Amendment VLA/92/01 as developed by the Joint Aviation Authority, and under Title 14 of the Code of Federal Regulations.

EFFECTIVE DATE: October 20, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Project Support Office, ACE–112, 901 Locust, Kansas City, Missouri 64106 or at telephone number 816–329–4146.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

A notice of availability was published on September 2, 2003 (68 FR 56809). No comments were received, and the design criteria are adopted as proposed.

Design Criteria

This airplane will be certified under the requirements of JAR–VLA (Joint Aviation Requirements-Very Light Aircraft) Amendment VLA/92/01 as developed by the Joint Aviation Authority and 14 CFR part 21, § 21.17.

Additional Requirements: Engine Mount Connection Design Criteria

The Aquila AT01 is a full composite single-engine aircraft with the engine mount fitted to the glass fiber composite fuselage. The airplane will be certified to the requirements of JAR/VLA 865 (Fire protection of flight controls and other flight structure) and JAR/VLA 1191 (Firewalls). However, tests must be performed that demonstrate that the interface between the metallic engine mount and the glass fiber reinforced plastic fuselage withstand a fire for 15 minutes while carrying loads under the following conditions:

(a) With one lost engine mount fitting the loads are distributed over the remaining 3 engine mount fittings. The most critical of these fittings must be chosen for the test.

(1) The loads are:

(i) In Z-direction the mass of the propulsion unit multiplied by a maneuvering load factor resulting from a 30° turn for 15 minutes, superimposed by a maneuvering load of 3 seconds representing the maximum positive limit maneuvering load factor of n=3.8 arising from JAR/VLA 337(a).

(ii) In X-direction the engine propulsion force at maximum continuous power for 5 minutes.

(b) The flame to which the component test arrangement is subjected must provide a temperature of 500° C within the target area.

(c) The flame must be large enough to maintain the required temperature over the entire test zone, *i.e.*, the fitting on the engine compartment side.

(d) It must be shown that the test equipment, *e.g.*, burner and instrumentation are of sufficient power, size, and precision to yield the test requirements arising from paragraphs (a) to (c) above. Guidance will be drawn from advisory material AC 20–135 to AC 23–2.

Additional Requirements: Winglets

Since winglets, as a specific structural element, are not addressed in the JAR/VLA requirements, the following is required:

Compliance must be demonstrated to the requirements of JAR 23.445—Outboard fins or winglets.

Issued in Kansas City, Missouri, on October 20, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28138 Filed 11–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2003–16467]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to reinstate the following expired information collection:

49 U.S.C. Section 5310-Capital Assistance Program for Elderly Persons and Persons with Disabilities and Section 5311 Nonurbanized Area Formula Program

DATES: Comments must be submitted before January 9, 2004.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Masselink, Office of Program Management, (202) 366–2053.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Section 5310-Capital Assistance Program for Elderly Persons and Persons With Disabilities and 49 U.S.C. Section 5311 Nonurbanized Area Formula Program (*OMB Number: 2132–0500*).

Background: The Capital Assistance Program for Elderly Persons and Persons with Disabilities provides financial assistance for the specialized transportation service needs of elderly persons and persons with disabilities. The program is administered by the States and may be used in all areas, urbanized, small urban, and rural. The Nonurbanized Area Formula Program provides financial assistance for the provision of public transportation services in nonurbanized areas and this program is also administered by the States. 49 U.S.C. 5310 and 5311 authorize FTA to review applications for federal financial assistance to determine eligibility and compliance with statutory and administrative requirements. Information collected during the application stage includes the project budget, which identifies funds requested for project implementation; a program of projects, which identifies subrecipients to be funded, the amount of funding that each will receive, and a description of the projects to be funded; the project implementation plan; the State management plan; a list of annual certifications and assurances; and public hearings notice, certification and transcript. The applications must contain sufficient information to enable FTA to make the findings required by law to enforce the program requirements. Information collected during the project management stage includes an annual financial report, an annual program status report, and pre-award and post-delivery audits. The annual financial report and program status report provide a basis for monitoring approved projects to ensure timely and appropriate expenditure of federal funds by grant recipients.

Respondents: State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

Estimated Annual Burden on Respondents: 102.44 hours for each of the respondents.

Estimated Total Annual Burden: 11,370 hours.

Frequency: Annual.

Issued: November 4, 2003.

Rita L. Wells,

Associate Administrator for Administration.

[FR Doc. 03–28188 Filed 11–7–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16450]

Notice of Receipt of Petition for Decision That Nonconforming 2000–2002 BMW 5 Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000–2002 BMW 5 Series passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000–2002 BMW 5 Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 10, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.].

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Automobile Concepts, Inc. of North Miami, Florida ("AMC") (Registered Importer 01–278) has petitioned NHTSA to decide whether 2000–2002 BMW 5 Series passenger cars are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 2000–2002 BMW 5 Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000–2002 BMW 5 Series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 2000–2002 BMW 5 Series passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000–2002 BMW 5 Series passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word "brake" on the dash in place of the international ECE warning symbol; (b) replacement of the speedometer to read in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps which incorporate front sidemarker lights; (b) installation of U.S.-model tail lamp assemblies which incorporate rear sidemarker lights; (d) installation of a U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component, or inscription of the required warning statement on the mirror's face.

Standard No. 114 *Theft Protection:* Activation of the warning buzzer.

Standard No. 118 *Power Window Systems:* Reprogramming of the power window system so that the windows will not operate with the ignition switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Activation of the seat belt warning buzzer by reprogramming the unit; (b) inspection of all vehicles and replacement of the driver's and passenger's air bags, head air bags, side air bags, knee bolsters, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the vehicles should be equipped in the front and rear outboard seating positions with combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton. Petitioner further states that the vehicles are equipped with a seat belt warning lamp that is identical to the lamp installed on U.S.-certified models.

Standard No. 214 *Side Impact Protection:* Inspection of all vehicles to ensure that they are equipped with door bars in the front and rear doors identical

to those in U.S. certified models and installation of those components on vehicles that are not already so equipped.

Standard No. 301 *Fuel System Integrity:* Petitioner states that the vehicles will comply with this standard once a U.S.-model expansion tank, active carbon container pipe, vent pipe, carbon canister, and leak diagnostic pump is installed to complete the vehicles' ORVR system.

In addition, the petitioner claims that front and rear bumper reinforcements and shocks must be added to the vehicles to comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 4, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–28142 Filed 11–7–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16449]

Notice of Receipt of Petition for Decision That Nonconforming 2000 Mazda MPV Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000 Mazda MPV multi-purpose passenger vehicles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000 Mazda MPV multi-purpose passenger vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 10, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 9 a.m. to 5 p.m. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Sunshine Car Import of Cape Coral, Florida ("SCI") (Registered Importer 01–289) has petitioned NHTSA to decide whether 2000 Mazda MPV multi-purpose passenger vehicles are eligible for importation into the United States. The vehicles which SCI believes are substantially similar are 2000 Mazda MPV multi-purpose passenger vehicles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000 Mazda MPV multi-purpose passenger vehicles to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

SCI submitted information with its petition intended to demonstrate that non-U.S. certified 2000 Mazda MPV multi-purpose passenger vehicles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000 Mazda MPV multi-purpose passenger vehicles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 119 *New Pneumatic Tires,* 124 *Accelerator Control Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner states that the vehicles also comply with the Bumper Standard found at 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word "BRAKE" on the instrument cluster in place of the international ECE warning symbol; (b) replacement or modification of the speedometer to read in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of U.S.-model taillamp assemblies.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection:* Installation of a key warning buzzer, or reprogramming of the vehicle to activate the key warning system.

Standard No. 118 *Power-Operated Window Systems:* Inspection of all vehicles and installation of a relay to make the window transport inoperative when the ignition is switched off in vehicles that are not already so equipped.

Standard No. 120 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 201 *Occupant Protection in Interior Impact:* Inspection of all vehicles and installation of U.S.-model components necessary to achieve compliance with the standard in vehicles that are not already so equipped.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer, wired to the seat belt micro switch; (b) Inspection of all vehicles and replacement of the driver's and passenger's air bags, knee bolsters, control unit, sensor, and all seat belts that are not U.S.-model components. The petitioner states that the vehicles should be equipped with dual front air bags and knee bolsters, with combination lap and shoulder belts at the front and rear outboard seating positions that are self-tensioning and released by means of a single red pushbutton, and with a lap belt in the rear center seating position.

Standard No. 214 *Side Impact Protection:* Inspection of all vehicles and installation of U.S.-model door beams on vehicles that are not already so equipped.

Standard No. 225 *Child Restraint Anchorage Systems:* Installation of a U.S.-model child seat tether anchor kit.

The petitioner states that all vehicles must be inspected to ensure that they are equipped with U.S.-model bumpers and that these components will be installed in vehicles not already so equipped to achieve compliance with the Bumper Standard found in 49 CFR part 581.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565. The petition further states that a certification label must be affixed to the driver's door latch post to comply with the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St. SW., Washington, DC 20590. Docket hours are from 9 am to 5 pm. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 4, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–28143 Filed 11–7–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2003–16060]

Reports, Forms, and Record Keeping Requirements; FMVSS No. 106, Brake Hoses

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on extension of a currently approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes an existing collection of information for Federal Motor Vehicle Safety Standard (FMVSS) No. 106, for which NHTSA intends to seek renewed OMB approval.

DATES: Comments must be received on or before January 9, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number NHTSA–2003–16060] by any of the following methods:

- Web site: <*http://dms.dot.gov*>. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to <*http://www.regulations.gov*>. Follow the online instructions for submitting comments.

Comments must refer to the docket notice numbers cited at the beginning of this notice. Please identify the proposed collection of information for which a comment is provided, by referencing OMB Control Number, 2127–0052.

Instructions: All submissions must include the agency name and docket number for this collection. It is requested, but not required, that two copies of the comments be provided. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Woods, Office of Crash Avoidance Standards (NVS–122), 400 Seventh Street, SW., Washington DC 20590. Mr. Woods' telephone number is (202) 366–6206. His FAX number is (202) 493–2739. Please identify the relevant collection of information by referring to the OMB Control Number, 2127–0052.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(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) How to enhance the quality, utility, and clarity of the information to be collected;

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

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: Brake Hose Manufacturing Identification, Federal Motor Vehicle Safety Standard (FMVSS) No. 106.

OMB Control Number: 2127–0052.

Type of Request: Request for public comment on extension of a currently approved collection of information.

Affected Public: Business or other for profit.

Abstract: 49 U.S.C. 30101 *et seq.*, as amended ("the Safety Act"), authorizes NHTSA to issue Federal Motor Vehicle Safety Standards (FMVSS). The Safety Act mandates that in issuing any Federal motor vehicle safety standards, the agency is to consider whether the standard is reasonable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed. Using this authority, FMVSS No. 106, Brake Hoses, was issued. This standard specifies labeling and performance requirements for all motor vehicle brake hose assemblers, brake hose and brake hose end fittings manufacturers for automotive vehicles. Prior to selling brake hoses, these entities must register their identification marks with NHTSA to comply with the labeling requirements of this standard. In accordance with the Paperwork Reduction Act, the agency must obtain OMB approval to continue collecting labeling information. The agency prepared a Supporting Statement in conjunction with this proposed extension of a currently approved collection of information.[1]

Currently, there are 1,114 manufacturers of hoses and assemblies registered with NHTSA. However, only approximately 20 respondents annually request to have their symbol added to or removed from the NHTSA database. To comply with this standard, each brake hose manufacturer or assembler must contact NHTSA and state that they want to be added to or removed from the NHTSA database of registered brake hose manufacturers. This action is usually initiated by the manufacturer with a brief written request via U.S. mail, facsimile, an e-mail message, or a telephone call. Currently, a majority of the requests are received via U.S. mail and the follow-up paperwork is conducted via facsimile, U.S. mail, or electronic mail. The estimated cost for complying with this regulation is $100 per hour. Therefore, the total annual cost is estimated to be $3,000 (time burden of 30 hours × $100 cost per hour).

Estimated Annual Burden: 30 hours.

Estimated Number of Respondents: 20.

Issued on: November 4, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–28141 Filed 11–7–03; 8:45 am]

BILLING CODE 4910–59–P

[1] *See* Docket No. NHTSA–2003–16060.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–857X]

Great Western Railway of Colorado, LLC—Abandonment Exemption—in Weld County, CO

Great Western [1] Railway of Colorado, LLC (GWRC), has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its Eaton Subdivision located between milepost 30.8 near Windsor, and milepost 42.5 near Eaton, totaling approximately 11.7 miles, in Weld County, CO. The line traverses United States Postal Service ZIP Codes 80615, 80546, and 80550.

GWRC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 10, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal

[1] Notice of the proposed abandonment was published, and the environmental and historic reports were filed and served, under STB Docket No. AB–857 (Sub-No. 1X). However, the Board subsequently redocketed the proceeding as STB Docket No. AB–857X.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any

expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 20, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 1, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

GWRC has filed an environmental report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 14, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539 (assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339). Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), GWRC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by GWRC's filing of a notice of consummation by November 10, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: November 3, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–28097 Filed 11–7–03; 8:45 am]

BILLING CODE 4915–00–P

request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change—Northbrook Property and Casualty Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 2 to the Treasury Department Circular 570; 2003 Revision, published July 1, 2003, at 68 FR 39186.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: Northbrook Property and Casualty Insurance Company, an Illinois corporation, has formally changed its name to St. Paul Protective Insurance Company, effective April 7, 2003. The Company was last listed as an acceptable surety on Federal bonds at 68 FR 39228, July 1, 2003.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to St. Paul Protective Insurance Company, Chicago Illinois. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $22,032,000 established for the Company as of July 1, 2003, remains unchanged until June 30, 2004.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2003 Revision, at page 39228 to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04643–2.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: October 29, 2003.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 03–28137 Filed 11–7–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8275 and 8275–R

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8275, Disclosure Statement, and Form 8275–R, Regulation Disclosure Statement.

DATES: Written comments should be received on or before January 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Disclosure Statement (Form 8275) and Regulation Disclosure Statement (Form 8275–R).

OMB Number: 1545–0889.

Form Number: Forms 8275 and 8275–R.

Abstract: Internal Revenue Code section 6662 imposes accuracy-related penalties on taxpayers for substantial

understatement of tax liability or negligence or disregard of rules and regulations. Code section 6694 imposes similar penalties on return preparers. Regulations sections 1.662–4(e) and (f) provide for reduction of these penalties if adequate disclosure of the tax treatment is made on Form 8275 or, if the position is contrary to a regulation, on Form 8275–R.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Responses: 1,000,000.

Estimated Time Per Response: 5 hr., 35 min.

Estimated Total Annual Burden Hours: 5,575,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 3, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–28205 Filed 11–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for applications for assistance under the "Per Diem Only" component of VA's Homeless Providers Grant and Per Diem Program. This Notice contains information concerning the program, funding priorities, application process, and amount of funding available.

DATES: An original completed and collated grant application (plus three completed collated copies) for assistance under the VA's Homeless Providers Grant and Per Diem Program must be received in the Grant and Per Diem Field Office, by 4 p.m. eastern time on January 28, 2004. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For a Copy of the Application Package: Download directly from VA's Grant and Per Diem Program Web page at: *http://www.va.gov/homeless/page.cfm?pg=3* or call the Grant and Per Diem Program at (toll-free) 1–877–332–0334. For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the Final Rule published in the **Federal Register** on September 26, 2003, §§ 61.0–61.82.

Submission of Application: An original completed and collated grant application (plus three copies) must be submitted to the following address: VA Homeless Providers Grant and Per Diem Field Office, 10770 N. 46th Street, Suite C–100, Tampa, FL 33617. Applications must be received in the Grant and Per Diem Field office by the application deadline. Applications must arrive as a complete package and in the proper format. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded. VA will remove materials that are included in application packages that have not been requested by VA.

FOR FURTHER INFORMATION CONTACT: Guy Liedke, VA Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–100, Tampa, FL 33617; (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This Notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible programs that have not previously applied for or received per diem in connection with a grant (*see* 38 CFR 17.700 through 17.731 (repealed) and Final Rule, published in the **Federal Register**, September 26, 2003, §§ 61.0 through 61.82). Public Law 107–95, section 5(a)(1) the Homeless Veterans Comprehensive Assistance Act of 2001 codified at 38 U.S.C. 2011, 2012, 2061, and 2064 authorizes this program. The program has been extended through Fiscal Year 2005. Funding applied for under this notice may be used for aid for service centers and supportive housing. Funding will be in the form of per diem payments issued to eligible entities for a period not to exceed 36 months, beginning on a date as determined by VA subject to availability of funds and re-authorization of the program past September 30, 2005. For eligibility criteria please refer to the Final Rule published in the **Federal Register** on September 26, 2003, 38 CFR 61.30, 61.31, and 61.32.

Grant recipients who received prior year funding for acquisition, renovation, or new construction need not reapply for per diem for those portions of their programs that were created with grant funds. Per diem for these programs is requested in the grant application and paid at the time of grant project completion. Per Diem Only Awardees from NOFA's in June of 2002 and May of 2003, should not reapply for per diem for those beds or portions of their programs that were funded under those rounds. However, if such entities desire per diem for programs/beds not funded by a previous grant application or a Per Diem Only Award an application responding to this NOFA is required.

VA is pleased to issue this Notice of Fund Availability (NOFA) for the Homeless Providers Grant and Per Diem Program. The Department expects to award approximately $15 million annually under this NOFA.

Funding available under this NOFA is being offered to help offset the operating expenses of existing state and local governments, Indian Tribal governments, faith-based, and

community-based organizations that are capable of providing supportive housing and/or supportive service center services for homeless veterans. The District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, may be considered eligible entities under the definition of "State" in the Final Rule, § 61.1 Definitions. It should be noted that VA payment is limited to the applicant's cost of care per eligible veteran minus other sources of payments to the applicant for furnishing services to homeless veterans up to the per day rate VA pays for State Home Domiciliary care. Awardees will be required to support their request for per diem payment with adequate fiscal documentation as to program income and expenses.

Interested organizations should know that the vast majority of homeless veterans in this country suffer from mental illness or substance abuse disorders or are dually diagnosed with both mental illness and substance abuse disorders. In addition, many homeless veterans have serious medical problems. Collaboration with VA medical centers, VA community-based outpatient clinics or other health care providers is an important aspect of assuring that homeless veterans have access to appropriate health care services.

It is important to be aware that VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor services provided to homeless veterans and outcomes associated with the services provided in grant and per diem-funded programs. VA is also implementing new procedures to further this effort. Applicants should be aware of the following:

All awardees that are conditionally selected in response to *this NOFA* must meet the Life Safety Code of the National Fire and Protection Association as it relates to their specific facility. VA will conduct an inspection prior to awardees being able to submit request for payment to ensure this requirement is met.

Each per diem-funded program will have a liaison appointed from a nearby VA medical facility to provide oversight and monitor services provided to homeless veterans in the per diem-funded program.

Monitoring will include at least an annual review of each per diem program's progress toward meeting internal goals and objectives in helping veterans attain housing stability, adequate income support, and self sufficiency as identified in each per diem program's original application. Monitoring will also include a review of the agency's income and expenses as they relate to this project to ensure per diem payment is accurate.

Each per diem-funded program will participate in VA's national program monitoring and evaluation system administered by VA's Northeast Program Evaluation Center (NEPEC). It is the intention of VA to develop specific performance targets with respect to housing for homeless veterans. NEPEC's monitoring procedures will be used to determine successful accomplishment of these housing outcomes for each per diem-funded program.

VA encourages all eligible and interested entities to review this NOFA and consider applying for funds to provide service for homeless veterans.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by Public Law 107–95, section 5(a)(1) the Homeless Veterans Comprehensive Assistance Act of 2001 codified at 38 U.S.C. 2011, 2012, 2061, 2064 and has been extended through Fiscal Year 2005. The program is implemented by the final rule codified at 38 CFR 61.0. The final rule was published in the **Federal Register** on September 26, 2003, the regulations can be found in their entirety in 38 CFR 61.0 through 61.82. Funds made available under this Notice are subject to the requirements of those regulations.

Allocation: Approximately $15 million annually is available for the per diem only award component of this program. This funding is expected to be available for a period not to exceed 36 months from a date as determined by VA, and is subject to the availability of funds and reauthorization of the program past September 30, 2005.

Funding Priorities: VA establishes priority for funding to underserved and low utilization areas. VA encourages applications from applicants that are in the identified underserved areas listed in first two priorities. Also, it is known that many other areas of low utilization could exist in those states that are not prioritized in this NOFA. These areas may have high populations of homeless veterans and limited services to address homeless veterans needs. These areas can include both urban and rural areas but may be particularly prevalent outside the high population areas. VA urges organizations in those areas, even if the organization is not located in a prioritized state, to apply.

VA establishes the following funding priorities in order to: (1) Implement the provisions of Public Law 107–95 regarding geographical dispersion and non-duplication of service; and (2) bolster capacity in areas that are underserved by the Grant and Per Diem Program. In this round of "Per Diem Only" funding, VA expects to award funding for approximately 1500 community-based supported housing beds.

In no case will a single organization in response to this NOFA be funded for more than 5% (75 beds) for a single project or for multiple project applications a total of 10% (150 beds) of the 1500 beds expected to be funded regardless of funding priority. Additionally, the cumulative number of beds within any State may not exceed 10% (150 beds) of the 1500 beds expected to be funded regardless of funding priority.

Funding priority 1. Priority one are Indian Tribal Governments; based on the total number of beds expected to be funded in this round, approximately 150 beds (10% of the 1500 beds expected to be funded) from Indian Tribal Governments will be selected in the first funding priority. Of those Indian Tribal Governments in the first funding priority, that are legally fundable, the highest scoring applicants will be funded first, until enough projects totaling approximately 150 beds are identified for funding. Applicants not funded in this priority may be considered in the third funding priority.

Funding priority 2. Priority two are applicants whose projects are physically located in the states of Alabama, Alaska, Georgia, Idaho, Illinois, Iowa, Kansas, Maine, Minnesota, Mississippi, Montana, Nebraska, New Mexico, Oklahoma, South Carolina, Texas, Utah, Vermont, and Virginia. Based on the total number of beds expected to be funded in this round, approximately 900 beds (60% of the 1500 beds expected to be funded) from eligible entities whose projects are located in these states will be selected as the first funding priority. Of those eligible entities in the second funding priority, that are legally fundable, the highest scoring applicants from each state will be funded until enough projects totaling approximately 900 beds are identified for funding. Applicants not funded in this priority may be considered in the third funding priority.

Funding priority 3. Finally, VA is encouraging interested, state and local governments, faith-based, and community-based organizations to apply for funding under this NOFA. Based on the total number of beds expected to be funded in this round, approximately 450 beds (30% of the 1500 beds expected to be funded) from the eligible entities that are state and local governments, faith-based, and community-based organizations, along

with those applicants not selected in the first or second priority will be considered in the third funding priority. Of those eligible entities that are legally fundable, the highest-ranked applications for which funding is available, will be selected for eligibility to receive per diem payment in accordance with their ranked order until enough projects totaling approximately 450 beds are identified for funding or until funding is expended.

Methodology: VA will review all [non-capital] grant *applicants* in response to this notice of funding availability. Then VA will group the applicants into the funding priorities categories. Applicants will then be ranked within their respective funding category based on score and any ranking criteria set forth in that funding category only if the applicant scores at least 500 cumulative points from paragraphs (b) (c) (d) (e) and (i) of the Final Rule published in the **Federal Register,** September 26, 2003, § 61.13.

The highest-ranked application for which funding is available, within the highest funding category, will be conditionally selected for eligibility to receive per diem payment in accordance with their ranked order until VA reaches the projected bed totals for each category. If funds are still available after selection of those applications in the highest priority group, VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in the Final Rule § 61.32.

Application Requirements: The specific grant application requirements will be specified in the application package. The package includes all required forms and certifications. Selections will be made based on criteria described in the application, Final Rule, and NOFA. Applicants who are selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Dated: November 3, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–28178 Filed 11–7–03; 8:45 am]

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Federal Register

Monday,
November 10, 2003

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2003–0121; FRL–7551–3]

RIN 2060–AE82

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for miscellaneous organic chemical manufacturing facilities. The final rule establishes emission limits and work practice standards for new and existing miscellaneous organic chemical manufacturing process units, wastewater treatment and conveyance systems, transfer operations, and associated ancillary equipment and implements section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet hazardous air pollutants (HAP) emission standards reflecting application of the maximum achievable control technology (MACT). The HAP emitted from miscellaneous organic chemical manufacturing facilities include toluene, methanol, xylene, hydrogen chloride, and methylene chloride. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, eye, and mucous membranes, effects on the central nervous system, and cancer. We do not have the type of current detailed data on each of the facilities and the people living around the facilities covered by the final rule for this source category that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and the potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, and the final rule reduces emissions, subsequent exposures will be reduced. The final rule will reduce HAP emissions by 16,800 tons per year for existing facilities that manufacture miscellaneous organic chemicals.

DATES: This rule is effective November 10, 2003.

ADDRESSES: Docket No. OAR–2003–0121 and A–96–04 are located at the Environmental Protection Agency, Office of Air & Radiation Docket & Information Center (6102T), 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group (C504–04), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–5402; electronic mail (e-mail) address *mcdonald.randy@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS*	Examples of regulated entities
Industry	3251, 3252, 3253, 3254, 3255, 3256, and 3259, with several exceptions..	Producers of specialty organic chemicals, explosives, certain polymers and resins, and certain pesticide intermediates.

*North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.2435 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. We have established official public dockets for this action under Docket ID No. OAR–2003–0121 and A–96–04. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. Although a part of the official docket, the public docket does not include confidential business information (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 Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

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 also 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. Portions of the docket materials are available electronically through Docket ID No. OAR–2003–0121. Once in the system, select "search," then key in the appropriate docket identification number. You may still access publicly available docket materials through the Docket ID No. A–96–04.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under CAA section 307(b)(1) of the CAA, judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit January 9, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under CAA section 307(b)(2) of the CAA, the requirements

established by the final rule may not be challenged separately in civil or criminal proceedings brought to enforce these requirements.

Background Information Document. The EPA proposed the NESHAP for miscellaneous organic chemical manufacturing on April 4, 2002 (67 FR 16154), and received 53 comment letters on the proposal. A background information document (BID) ("National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Miscellaneous Organic Chemical Manufacturing Industry, Summary of Public Comments and Responses,") containing EPA's responses to each public comment is available in Docket ID No. OAR–2003–0121.

Outline. The information presented in this preamble is organized as follows:

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and some area sources of HAP and to establish NESHAP for the listed source categories and subcategories. A major source of HAP is a stationary source or group of stationary sources located within a contiguous area under common control that has the potential to emit greater than 9.1 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that all major sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. In considering whether to establish standards more stringent than the floor, we must consider cost, non-air quality health and environmental impacts, and energy requirements.

C. What Is the History of the Source Categories?

Section 112 of the CAA requires us to establish rules for categories of emission sources that emit HAP. On July 16, 1992, we published an initial list of 174 source categories to be regulated (57 FR 31576). The listing was our best attempt to identify major sources of HAP by manufacturing category. Following the publication of that listing, we published a schedule for the promulgation of emission standards for each of the 174 listed source categories. At the time the initial list was published, we recognized that we might have to revise the list from time to time as better information became available.

Based on information we collected in 1995, we realized that several of the original source categories on the list had similar process equipment, emission characteristics and applicable control technologies. Additionally, many of these source categories were on the same schedule for promulgation, by November 15, 2000. Therefore, we decided to combine a number of source categories from the original listing into one broad set of emission standards. Today's final rule reflects the subsumption of the following source categories into a new source category called Miscellaneous Organic Chemical Manufacturing: benzyltrimethylammonium chloride production, carbonyl sulfide production, chelating agents production, chlorinated paraffins production, ethylidene norbornene production, explosives production, hydrazine production, photographic chemicals production, phthalate plasticizers production, rubber chemicals production, symmetrical tetrachloropyridine production, OBPA/1,3-diisocyanate production, alkyd resins production, polyester resins production, polyvinyl alcohol production, polyvinyl acetate emulsions production, polyvinylbutyral production, polymerized vinylidene chloride production, polymethylmethacrylate production, maleic anhydride copolymers production, ammonium sulfate production—caprolactam by-product plants, and quaternary ammonium

compounds production. Along with these 22 source categories, the Miscellaneous Organic Chemical Manufacturing source category is also defined to include other organic chemical manufacturing processes which are not being covered by any other MACT standards.

Today's action establishes final standards for miscellaneous organic chemical manufacturing (40 CFR part 63, subpart FFFF).

D. What Are the Health Effects Associated With the Pollutants Emitted From Miscellaneous Organic Chemical Manufacturing?

The CAA was created, in part, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of the population" (see section 101(b) of the CAA). These NESHAP will protect public health by reducing emissions of HAP from miscellaneous organic chemical manufacturing facilities.

Miscellaneous organic chemical manufacturing facilities emit an estimated 21,900 Mg/yr (24,100 tpy) of organic and inorganic HAP. Organic HAP include toluene, methanol, xylene, methyl ethyl ketone, ethyl benzene, methyl isobutyl ketone, and vinyl acetate. Inorganic HAP emitted by this industry include hydrogen chloride (HCl) and some HAP metals in the form of particulate matter (PM). The final rule reduces HAP emissions from miscellaneous organic chemical manufacturing facilities by 68 percent. As a result of controlling these HAP, the final NESHAP will also reduce emissions of volatile organic compounds (VOC). A summary of the potential health effects caused by exposure to these pollutants is presented in the preamble to the proposed rule (67 FR 16154).

E. How Did We Develop the Final Rule?

We proposed the NESHAP for the miscellaneous organic chemical manufacturing source category on April 4, 2002 (67 FR 16154) and provided an 85-day comment period. We received a total of 55 comment letters. A copy of each of the comment letters is available in Docket No. OAR–2003–0121 or A–96–04.

The final rule reflects full consideration of all the comments we received on the proposed rule, as well as our reassessment of certain data in the rulemaking record. Major public comments on the proposed subpart FFFF, along with our responses to the comments, are summarized in section IV of this preamble. A detailed response to all comments is included in the Background Information Document for the promulgated standards (Docket No. OAR–2003–0121). Comments on the proposed miscellaneous coating manufacturing NESHAP will be summarized and discussed in the subpart HHHHH promulgation package.

II. Summary of the Final Rule

A. What Are the Affected Sources and Emission Points?

Emission points identified from miscellaneous organic chemical manufacturing production include process vents, storage tanks, equipment leaks, transfer operations, and wastewater collection and treatment systems. The affected source subject to this subpart is the facilitywide collection of miscellaneous organic chemical manufacturing process units (MCPU), wastewater treatment and conveyance systems, transfer operations, and associated ancillary equipment such as heat exchange systems that are located at a major source of HAP as defined in section 112(a) of the CAA. An MCPU includes a miscellaneous organic chemical manufacturing process, as defined in 40 CFR 63.2550, and must meet the following criteria: (1) It manufactures any material or family of materials described in 40 CFR 63.2435(b)(1); it processes, uses, or produces HAP described in 40 CFR 63.2435(b)(2); and, except for certain process vents that are part of a chemical manufacturing process unit, as identified in 40 CFR 63.100(j)(4), the MCPU is not part of an affected source under another subpart of 40 CFR part 63. The MCPU is defined according to the equipment used to make the subject material, and it includes storage tanks that are associated with the process.

New sources are created by reconstructing existing sources, constructing new "greenfield" facilities, or constructing an addition to an existing source that is a dedicated MCPU and has the potential to exceed 10 tpy of an individual HAP or 25 tpy of combined HAP. Reconfiguration of existing equipment does not constitute "construction."

B. What Are the Emission Limits and Work Practice Standards?

The final rule regulates HAP emissions from miscellaneous organic chemical manufacturing facilities that are determined to be major sources. The standards apply to existing sources as well as new sources.

Process Vents

The final standards for existing batch and continuous process vents are set at a floor level of control and include requirements for organic and inorganic HAP. For batch process vents, the final standards require you to reduce uncontrolled organic HAP emissions from the sum of all batch process vents within the process by 98 percent if uncontrolled emissions exceed 4,540 kilograms per year (kg/yr) (10,000 pounds per year (lb/yr)). No control of vents is required for processes that are limited to uncontrolled emissions of 4,540 kg/yr (10,000 lb/yr) or less, as calculated on a rolling 365-day basis. A second control option for batch vents is to reduce the sum of all batch process vents within the process by 95 percent using recovery devices.

For continuous process vents, the final standards require control of vents determined to have a total resource effectiveness (TRE) index equal to or less than 1.9. The standards require you to reduce HAP emissions by at least 98 percent by weight if the TRE of the outlet gaseous stream after the last recovery device is less than 1.9, or to reduce the outlet total organic compound (TOC) concentration to 20 parts per million by volume (ppmv) or less. For continuous process vents, we reference the process vent standards contained in 40 CFR part 63, subpart SS.

For inorganic HAP, we set the standards based on the floor and made no distinction between batch and continuous streams. The standards for hydrogen halide and halogen HAP (*i.e.*, HCl, hydrogen fluoride (HF), and chlorine (Cl_2)) were determined to be 99 percent control of hydrogen halide and halogen HAP from the sum of all process vents in processes with uncontrolled hydrogen halide and halogen HAP emissions equal to or greater than 1,000 lb/yr. The final rule also requires control of hydrogen halide and halogen HAP emissions generated by the combustion control of halogenated streams, which are defined by a mass emission rate of halogen atoms contained in organic compounds of 0.45 kilograms per hour (kg/hr) or more. Specifically, hydrogen halide and halogen HAP emissions must be reduced after the combustion device by 99 percent, to no more than 0.45 kg/hr, or to no more than 20 ppmv. Alternatively, the halogen atom mass rate before the combustion device may be reduced to no more than 0.45 kg/hr or to no more than 20 ppmv. The MACT floor for PM HAP emissions from process vents at existing sources is no

emissions reduction, and we did not set a standard above the floor.

We defined the term "process" to include all equipment that collectively function to produce a material or family of materials that are covered by the source category. For batch process vents, we also established an equivalent mass cutoff of 200 lb/yr in the final rule that corresponds to the 50 ppmv concentration.

The new source standards for batch and continuous process vents follow the same formats as described above. However, some of the applicability triggers are more stringent. All batch process vents within a process for which the uncontrolled organic HAP emissions from batch process vents exceed 1,360 kg/yr (3,000 lb/yr) must be reduced by either 98 percent using a control device or 95 percent using a recovery device. All continuous process vents with a TRE of less than or equal to 5.0 must be controlled by 98 percent. For inorganic HAP, the standards for new sources are identical to the standards for existing sources. The new source standard for PM HAP emissions from process vents is 97 percent control for each process with uncontrolled PM HAP emissions greater than or equal to 400 lb/yr. Control requirements for halogenated streams are also the same as for existing sources.

Storage Tanks

The final rule requires existing sources to control emissions from storage tanks having capacities greater than or equal to 38 cubic meters (m^3) (10,000 gallons (gal)) and storing material with a HAP partial pressure of greater than 6.9 kilopascals (kPa) (1.0 pound per square inch absolute (psia)). For new sources, the standards require control of storage tanks having capacities greater than or equal to 38 m^3 (10,000 gal) and storing material with a HAP partial pressure of greater than 0.7 kPa (0.1 psia). For both existing and new sources, the required control is to use a floating roof or to reduce the organic HAP emissions by 95 percent by weight or more. We also concluded in a revised analysis that for small storage tanks (capacities <10,000 gal), that there is a "no emission reduction" MACT floor, and we did not specify a standard because the total impacts of a more stringent regulatory alternative were found to be unreasonable. Additionally, we concluded that the new source MACT floor as proposed is appropriate (95 percent control of all tanks with capacities of 10,000 gal and storing material with a HAP partial pressure of 0.1 psia) for all tanks.

Wastewater

The final rule requires management and treatment of Group 1 wastewater streams and residuals removed from Group 1 wastewater streams to be consistent with the requirements contained in 40 CFR part 63, subpart G. For the purposes of 40 CFR part 63, subpart FFFF, the characteristics of Group 1 wastewater streams are defined with the following characteristics at the point of determination (POD):

- Process wastewater containing partially soluble HAP at an annual average concentration greater than 50 parts per million by weight (ppmw) and a combined total annual average concentration of soluble and partially soluble HAP of 10,000 ppmw or greater at any flowrate.
- Process wastewater containing partially soluble HAP at an annual average concentration greater than 50 ppmw and a combined total annual average concentration of soluble and partially soluble HAP of 1,000 ppmw or greater at an annual average flowrate of 1 liter per minute (lpm) or greater.
- Process wastewater containing partially soluble HAP at an annual average concentration of 50 ppmw or less and soluble HAP at an annual average concentration of 30,000 ppmw or greater and a total annual load of soluble HAP of 1 tpy or greater.

At new sources, the requirements are identical to those for existing sources, but the applicability triggers on individual streams are more stringent. In addition to controlling streams that meet the thresholds for existing sources, control is also required for the following streams at their POD:

- Process wastewater containing an annual average HAP concentration exceeding 10 ppmw of compounds listed in Table 8 of 40 CFR part 63, subpart G, with annual average flowrate greater than 0.02 lpm.
- Process wastewater containing partially soluble HAP at an annual average concentration of 50 ppmw or less and soluble HAP at an annual average concentration of 4,500 ppmw or greater and a total annual load of soluble HAP of 1 tpy or greater.

The final rule also requires compliance with the requirements of 40 CFR 63.105 for maintenance wastewater streams, and compliance with the requirements in 40 CFR 63.149 for liquid streams in open systems within an MCPU.

Transfer Racks and Ancillary Sources

The final standards for transfer racks, maintenance wastewater, and heat exchange systems are unchanged from the proposal, and they are identical to the requirements in the hazardous organic NESHAP (HON). For transfer operations, we are requiring the HON level of control for transfer racks that load greater than 0.65 million liters per year (l/yr) (0.17 million gallons per year (gal/yr)) of liquid products that contain organic HAP with a partial pressure of 10.3 kPa (1.5 psia). For each transfer rack that meets these thresholds, total organic HAP emissions must be reduced by 98 percent by weight or more, or the displaced vapors must be returned to the process or originating container. For maintenance wastewater, you must prepare a plan for minimizing emissions. For heat exchange systems, you must implement a monitoring program to detect leaks into the cooling water.

Equipment Leaks

For equipment leaks, the final rule requires implementation of a leak detection and repair (LDAR) program. For processes with no continuous process vents, you must implement the program in 40 CFR part 63, subpart TT. For processes with at least one continuous process vent, you must implement the program in 40 CFR part 63, subpart UU. Alternatively, you may elect to comply with the requirements in 40 CFR part 65, subpart F (*i.e.*, the Consolidated Federal Air Rule).

Pollution Prevention

The final rule also includes a pollution prevention alternative for existing sources that meets the control level of the MACT floor and may be implemented in lieu of the emission limitations and work practice standards described above. The pollution prevention alternative provides a way for facilities to comply with MACT by reducing overall consumption of HAP in their processes; therefore, it is not applicable for HAP that are generated in the process or for new sources. Specifically, you must demonstrate that the production-indexed consumption of HAP has decreased by at least 65 percent from a 3-year average baseline set no earlier than the 1994 through 1996 calendar years. The production-indexed consumption factor is expressed as the mass of HAP consumed, divided by the mass of product produced. The numerator in the factor is the total consumption of the HAP, which describes all the different areas where it can be consumed, either through losses to the environment, consumption in the process as a reactant, or otherwise destroyed.

Emissions Averaging Provisions

The final rule incorporates the emissions averaging provisions in 40 CFR part 63, subpart G (the HON), with some changes to accommodate batch process vents. For example, the final rule specifies that uncontrolled emissions from batch process vents are to be calculated using the procedures in 40 CFR part 63, subpart GGG, and performance testing must be conducted under worst case conditions, as defined in subpart GGG.

Alternative Standard

The final rule contains an alternative standard for process vents and storage tanks. When emissions are controlled using combustion control devices, the alternative standard requires control to an undiluted TOC concentration of 20 ppmv or less and an undiluted hydrogen halide and halogen HAP concentration of 20 ppmv or less. For noncombustion control devices, the TOC concentration and total hydrogen halide and halogen HAP concentration both must be reduced to 50 ppmv or less. Continuous monitoring of outlet TOC and total hydrogen halide and halogen HAP is required for compliance with this alternative standard.

C. What Are the Testing and Initial Compliance Requirements?

Process Vents

The final rule requires calculation of uncontrolled emissions as a first step in demonstrating compliance with the 98 percent or 95 percent reduction requirement for batch process vents. This initial calculation of uncontrolled emissions is not required if you choose to control process vents using the alternative standard or using specified combustion devices. For continuous process vents, the final rule requires calculation of the TRE index values using the procedures contained in the HON for continuous process vents.

To verify that the required reductions have been achieved, you must either test or use calculation methodologies, depending on the emission stream characteristics, control device, and the type of process vent. For each continuous process vent with a TRE less than or equal to 1.9, compliance with the percent reduction emission limitation must be verified through performance testing. For batch process vents, initial compliance demonstrations must be conducted in accordance with the requirements in the Pharmaceuticals Production NESHAP (40 CFR part 63, subpart GGG). Specifically, performance tests are required for control devices handling greater than 9.1 Mg/yr (10 tpy) of HAP, while either engineering assessments or performance tests are allowed for control devices with lower loads and for condensers. Performance tests must be conducted under worst-case conditions if the control device is used to control emissions from batch process vents.

Storage Tanks, Transfer Racks, and Wastewater

To demonstrate initial compliance with emission limits and work practice standards for storage tanks, transfer racks, and wastewater systems, the final rule allows you to either conduct performance tests or document compliance using engineering calculations. The initial compliance procedures are specified in 40 CFR part 63, subpart SS (National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process), subpart WW (National Emission Standards for Storage Vessels (Tanks—Control Level 2)), and subpart G (the HON), for control devices used to reduce emissions from storage tanks and transfer racks, storage tanks controlled with floating roofs, and wastewater sources, respectively.

D. What Are the Continuous Compliance Requirements?

The final rule requires monitoring, inspections, and calculations to demonstrate ongoing compliance. Typically, continuous monitoring (*i.e.*, every 15 minutes) of emissions or operating parameters is required when using a control device or wastewater treatment device. If operating parameters are monitored, operating limits must be established during the initial compliance demonstration. Periodic inspections are required for emission suppression equipment on waste management units and floating roofs on storage tanks and wastewater tanks. For processes that have Group 2 batch process vents (*i.e.*, total organic HAP emissions less than 10,000 lb/yr), you must track the number of batches produced to show that emissions remain below the Group 1 threshold.

Continuous monitoring requirements for control devices are specified in 40 CFR part 63, subpart SS, with some exceptions specified in the final rule. For example, the final rule requires that monitoring data during periods of startup, shutdown, and malfunction (SSM) be used in daily averages, whereas subpart SS excludes such data from averages. For batch process vents, you may request approval to set operating limits for individual or groups of emission episodes using the results of the performance test and applicable supplementary information. To use this approach, you must provide rationale for your selected operating limits in your precompliance report. As an alternative to daily averaging, the final rule also allows averaging over a batch or segment of a batch for control devices used to reduce emissions from batch process vents. For control devices that do not control more than 1 tpy of HAP emissions, only a daily verification that the control device is operating as designed is required.

Inspections for floating roofs must be conducted in accordance with 40 CFR part 63, subpart WW. All monitoring and inspection requirements for wastewater systems must be conducted in accordance with 40 CFR part 63, subpart G.

E. What Are the Notification, Recordkeeping, and Reporting Requirements?

Recordkeeping and reporting requirements are outlined in the General Provisions to part 63 (40 CFR part 63, subpart A), as well as the requirements in referenced subpart G (the HON), subpart SS (National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process), subpart TT (National Emission Standards for Equipment Leaks—Control Level 1), subpart UU (National Emission Standards for Equipment Leaks—Control Level 2 Standards), and subpart WW (National Emission Standards for Storage Vessels—Control Level 2). The sections of subpart A that apply to the final rule are designated in Table 12 to subpart FFFF of 40 CFR part 63. Additional recordkeeping and reporting requirements are specific to the final rule. For example, you are required to submit a precompliance report if you choose to comply using an alternative monitoring approach, use an engineering assessment to demonstrate compliance, or comply using a control device handling less than 1 tpy of HAP emissions. The final rule also references the SSM recordkeeping and reporting requirements contained in 40 CFR part 63, subpart SS. Under these provisions, SSM records are required only for events during which excess emissions occur or events when the startup, shutdown, and malfunction plan (SSMP) was not followed.

Consistent with the General Provisions, you must submit an initial notification, a notification of compliance status (NOCS) report, and compliance reports. The initial notification is required within 120 days of the effective date of 40 CFR part 63,

subpart FFFF. That brief notification serves to alert appropriate agencies (State agencies and EPA Regional Offices) of the existence of your affected source and puts them on notice for future compliance actions. The NOCS report, which is due 150 days after the compliance date of the NESHAP, is a comprehensive report that describes the affected source and the strategy being used to comply. The NOCS report is also an important aspect of the title V permitting strategy for sources subject to subpart FFFF. Compliance reports are required every 6 months.

III. Summary of Environmental, Energy, and Economic Impacts

A. What Are the Air Emission Reduction Impacts?

We estimate nationwide baseline HAP emissions from miscellaneous organic chemical manufacturing sources to be 21,900 Mg/yr (24,200 tpy). We project that the final rule will reduce HAP emissions by about 15,200 Mg/yr (16,800 tpy). Because many of the HAP emitted by miscellaneous organic chemical manufacturing facilities are also VOC, the NESHAP will also reduce VOC.

Combustion of fuels in combustion-based control devices and to generate electricity and steam will increase secondary emissions of carbon monoxide (CO), nitrogen oxides (NO_X), sulfur dioxide (SO_2), and PM less than 10 microns in diameter (PM_{10}) by about 870 Mg/yr (960 tpy). These impacts were estimated assuming electricity is generated in coal-fired power plants, steam is produced in natural gas-fired industrial boilers, and natural gas is used as the auxiliary fuel in incinerators and flares.

B. What Are the Cost Impacts?

The cost impacts include the capital cost to install control devices and monitoring equipment, and include the annual costs involved in operating control devices and monitoring equipment, implementing work practices, and conducting performance tests. The annual cost impacts also include the cost savings generated by reducing the loss of product or solvent in the form of emissions. The total capital cost for existing sources is estimated to be $127 million, and the total annual cost for existing sources is estimated to be $75.1 million per year.

We estimate that in the first 3 years after the effective date of 40 CFR part 63, subpart FFFF, that the annual cost burden will average $3,150/yr per respondent for recordkeeping and reporting requirements. This estimate was based on having 251 sources. Most of these costs are for new and reconstructed sources that must be in compliance upon startup; other costs are for existing sources to prepare initial notifications and plans. In the fourth year after the effective date, existing facilities must begin to monitor and record operating parameters to comply with operating limits and prepare compliance reports, which will significantly increase the annual burden nationwide.

We expect that the actual compliance cost impacts of the NESHAP will be less than described above because of the potential to use common control devices, upgrade existing control devices, implement emissions averaging, or comply with the alternative standard. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, we could not quantify the amount by which actual compliance costs might be reduced.

C. What Are the Economic Impacts?

The economic impact analysis for 40 CFR part 63, subpart FFFF, shows that the expected price increase for affected output is 0.5 percent, and the expected change in production of affected output is a reduction of 0.3 percent. One plant closure is expected out of the 207 facilities affected by the final rule. It should be noted that the baseline economic conditions of the facility predicted to close affect the closure estimate provided by the economic model, and that the facility predicted to close appears to have low profitability levels currently. Therefore, no adverse impact is expected to occur for those industries that produce miscellaneous organic chemicals affected by the NESHAP, such as soaps and cleaners, industrial organic chemicals, and agricultural chemicals.

D. What Are the Non-air Health, Environmental, and Energy Impacts?

With the assumption that overheads from steam stripping will be recoverable as material or fuel, no solid waste is expected to be generated from steam stripping of wastewater streams. No solid waste is expected to be generated from controls of other emission points. We expect the overall energy demand (*i.e.*, for auxiliary fuel in incinerators, electricity generation, and steam production) to increase by an estimated 6.1 million gigajoules per year (5.8 trillion British thermal units per year).

IV. Summary of Responses to Major Comments

A. What Changes to Applicability Did the Commenters Suggest?

Comment: Several commenters suggested using only one industrial classification code, preferably the NAICS. The commenters also recommended increasing the specificity of the NAICS codes to six digits. As an alternative, one commenter suggested that the codes be scrapped and applicability be based simply on the manufacture of organic chemicals. Finally, the commenters requested exceptions for all codes that refer to inorganic chemical manufacturing processes.

Response: We decided to retain both the SIC and NAICS codes in the final rule. Although SIC codes are being phased out, we decided to retain them because many industries still use these codes, and they were the basis for the selecting industries that received the section 114 information request. We rejected the suggestion to use six-digit NAICS codes because the list would be unnecessarily long; listing exclusions is much shorter. For the final rule, we also decided to list only the three-digit NAICS code for the chemical manufacturing subsector (325) rather than the seven four-digit codes for industry groups within this subsector because 40 CFR part 63, subpart FFFF, applies to all of the industry groups. However, there are selected manufacturing processes within both the SIC and NAICS industry groups for which the final rule is not applicable. These processes are exempted in the final rule by listing only the applicable six-digit NAICS code. Thus, a process described by a listed six-digit NAICS code is exempt even if it falls within an otherwise applicable SIC code. The exemptions cover all but three of the processes described by NAICS codes 325131, 325181, 325188, 325314, 325991, and 325992. The three processes within these otherwise exempt categories are hydrazine, reformulating plastics resins from recycled plastics products, and photographic chemicals.

Comment: Two commenters stated that hydrazine manufacturing should not be subject to 40 CFR part 63, subpart FFFF, and the Hydrazine Manufacturing source category should be delisted because within the next few months, there will no longer be major sources within the source category; emissions from hydrazine manufacturing are too low to trigger controls; and hydrazine is an inorganic compound. If hydrazine is not removed from the miscellaneous

organic chemical manufacturing source category, one of the two commenters suggested that alternative testing methods are needed for hydrazine and that the definition of TOC should be changed to include hydrazine. The other commenter pointed out that the TRE equation is meaningless for hydrazine manufacturing plants because it requires sources to determine the hourly emission rate of organic HAP, and hydrazine and the raw materials used to produce hydrazine (*e.g.*, chlorine, caustic soda, and ammonia) are all inorganic.

Response: Subpart FFFF covers the manufacture of hydrazine because it was one of the source categories subsumed, and the standards are based on a broad variety of chemical manufacturing processes. We developed separate standards for hydrogen halide and halogen emissions that require 99 percent control when uncontrolled hydrogen halide and halogen emissions exceed 1,000 lb/yr per process. However, hydrazine itself is also a HAP. Therefore, process vents containing hydrogen halide and halogen HAP would be subject to standards for hydrogen halide and halogen emissions. Hydrazine emissions from process vents would be subject to either the continuous process vent standards or the batch process vent standards. For the purposes of calculating the TRE for continuous process vents or mass emissions for comparison with the 10,000 lb/yr applicability threshold for batch process vents, the final rule specifies that hydrazine is to be considered an organic HAP.

Comment: One commenter requested an exemption for photographic processing chemicals such as fixers, bleaches, and developers because HAP emissions from the processes are minimal, the equipment to manufacture these compounds are mixing vessels, and the processes do not appear to be included in the MACT floor. The commenter suggested that administrative burdens associated with the final rule, including calculating uncontrolled emissions, are not warranted.

Response: We have not exempted manufacturing processes for photographic processing chemicals. The manufacturing equipment and emission characteristics, such as mixing vessels and their associated emissions from vapor displacement and evaporative losses, are represented by processes contained in the database.

Comment: Many commenters supported the concept of treating process vents from the production of energetics as a separate class of emission streams subject to alternative requirements or a lesser degree of control for safety reasons. Several commenters provided specifics on the hazards posed by incineration-based controls and made recommendations that included providing definitions for energetics, waiving requirements for energetics or establishing a process where safe control technology can be identified on a case-by-case basis, and considering other control alternatives for compounds such as organic peroxides, powdered metals, metal catalysts, and highly flammable gases such as ethylene oxide and hydrogen. One of the commenters indicated that condensation and carbon adsorption are not effective on some compounds, such as nitroglycerine, which is unstable at low temperatures and cannot be safely controlled by carbon adsorption because it spontaneously combusts. The commenter supported a definition for energetics that includes "propellants, explosives, and pyrotechnics." A second commenter suggested defining explosives as material included in the U.S. Department of Transportation hazardous materials tables (49 CFR 172.101) and listed as Hazard Class I hazardous material to include all Class I materials, or specifically materials in Divisions 1.1 through 1.6. The commenter indicated that using this approach, explosive manufacturers would know who they are because they are already shipping their materials as explosives; manufacturers who make materials that have some energetic properties, but are not shipped as explosives, would clearly be excluded. A third commenter requested that other compounds also be included in the subclass as explosives, particularly organic peroxides. The commenter cited EPA's rationale in providing a similar exclusion from control according to Resource Conservation and Recovery Act (RCRA), subpart CC for organic peroxide producers. A fourth commenter agreed and requested that EPA incorporate language already included at 40 CFR 264.1080(d) (duplicated at § 265.1080(d)) and 40 CFR 264.1089(i) (duplicated at § 265.1089(i)) in 40 CFR part 63, subpart FFFF. The commenter also suggested that other streams exist in the industry that may also meet this definition. For instance, reactive radioactive mixed waste wastewaters generated under the authority of the Atomic Energy Act and the Nuclear Waste Policy Act are exempted from closed conveyance requirements per 40 CFR 264.1080(b)(6). The U.S. Department of Energy requested this exemption because the radioactive mixed waste (RMW) containers "cannot be tightly sealed due to unacceptable pressure buildup of hydrogen gas to levels which can . . . create a potentially serious explosion hazard." The commenters requested that EPA include language that allows facilities to document the hazardous nature of their wastewater streams and petition for exemption from the wastewater standards.

Response: In the proposal, we recognized that the 98 percent control requirement for all process vents within affected processes would force incineration technology, and that this technology might not be appropriate for all process vent streams. Therefore, we also allowed 95 percent reduction of process vents if "recovery" control technology was employed to achieve required reductions. We envisioned at the time that the majority of this technology would be condensation. We solicited comments in the proposal on what commenters would consider achievable reductions from appropriate control technologies and how to define energetics. With the exception of the nitroglycerin example, we did not receive many comments that indicated that 95 percent control could not be achieved in most cases. Regarding organic peroxides, the add-on control requirement of RCRA, subpart CC, is 95 percent; therefore, EPA's earlier decision that indefinitely stayed requirements for producers of organic peroxides is consistent with the assumption that even 95 percent control cannot be achieved in these cases. Similarly, just as some reactive radioactive mixed wastewaters cannot be safely managed in closed systems, as one commenter suggested, there may be other situations that exist where sources may not be able to achieve the control efficiencies required by the final standards because of safety concerns. Based on the specific comments we received, we have concluded that it is appropriate to narrowly define a class of energetics and organic peroxides producers and allow, on a case-specific basis, a procedure to request an alternative compliance option. For these materials, the owner or operator must prepare and submit documentation in the precompliance report similar to the requirements in 40 CFR 264.1089(i) and 265.1089(i), explaining why an undue safety hazard would be created if the air emission controls specified in 40 CFR part 63, subpart FFFF, were installed on process vents, wastewater, and storage tanks containing energetics and organic peroxides, and describing what practices would be implemented to

minimize HAP emissions from energetics and organic peroxides manufacturing.

We did not broadly define energetics to encompass reactive or explosive conditions and the presence of highly flammable gases such as ethylene oxide and hydrogen. Based on past rules, we realize that combustion technology may not be appropriate in these cases, but other control technologies achieving relatively high control efficiencies are available and technically feasible.

Finally, the final rule includes a definition of "energetics" that is based on the definitions suggested by the commenters, and a definition of "organic peroxides" that is taken from 40 CFR 264.1080(d):

Energetics means propellants, explosives, and pyrotechnics and include materials listed at 49 CFR 172.101 as Hazard Class I Hazardous Materials, Divisions 1.1 through 1.6.

Organic peroxides means organic compounds containing the bivalent -o-o- structure which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

Borrowing from language contained in 40 CFR 264.1080(d), only processes producing "organic peroxides as the predominant products manufactured by the process" and manufacturing "more than one functional family of organic peroxides or multiple organic peroxides within one functional family," with one or more of these organic peroxides that "could potentially undergo self-accelerating thermal decomposition at or below ambient temperatures" would be eligible for identical treatment as energetics.

Comment: One commenter asked for clarification that only solvent recovery operations operating at chemical manufacturing facilities are covered under 40 CFR part 63, subpart FFFF. The commenter also suggested adding a paragraph to the final rule to alert wastewater treatment operators that the final rule might apply to them.

Response: We have not included the suggested language because solvent recovery operations are in fact covered by 40 CFR part 63, subpart FFFF, even if they are not located at a chemical manufacturing facility. However, offsite operations that are part of an affected source under another subpart of 40 CFR part 63, such as the Offsite Waste and Recovery Operations NESHAP (subpart DD), are not subject to subpart FFFF, as specified in § 63.2435(b)(3) of the final rule. Secondly, offsite treatment facilities are not affected sources but they may be required to treat wastewaters according to the provisions in subpart FFFF. Operators will be notified by respective dischargers of their obligation to treat in accordance with § 63.132(g)(1), as referenced in Table 7 to subpart FFFF of part 63.

Comment: A number of commenters identified concerns with the "family of materials" concept and requested that EPA either eliminate it or make several changes. Several commenters suggested that the term is inconsistent with the floor determination and the information collection request (ICR), which allowed respondents to group materials but did not require it. One commenter suggested that the family of materials concept would discourage innovative or new and changed products due to constantly changing calculations and control requirements and increased administrative burden associated with tracking families. The commenter also stated that the concept is incompatible with flexible batch processes and could lead to division of products and equipment that are emitting to the same vent or groupings of products located in different buildings. The commenter suggested that grouping be conducted on shared process vents rather than families.

Four of the commenters suggested two key concepts to incorporate into the definition: the need to be able to group together processes with essentially identical emission sources and/or stream characteristics; and the recognition that, under some circumstances, functionality (*e.g.*, end use or product characteristics) may be an appropriate option in lieu of chemical composition. One of the commenters also suggested that we revise the list of examples because the proposed examples appear to be much broader categories of products than what other parts of the definition seem to allow and apply the concept only to batch process units in the same operational area.

One commenter stated that if EPA insisted on regulating equipment based on a "family of materials" concept, it should be limited to batch processes, and the emission threshold from the batch database should be recalculated. Finally, one of the commenters suggested that if EPA does not remove the family of materials concept, EPA must allow facilities to exclude from a family of materials grouping all individual products when the manufacture results in uncontrolled HAP emissions of less than 500 lb/yr for nondedicated batch operations or 100 lb/yr for dedicated batch operations.

Response: The concept of "family of materials" is merely a logical grouping to describe materials that have very similar production and emission stream characteristics such that they can be considered as a single process. The final rule bases its control requirement on the sum of uncontrolled emissions within a process grouping. Only processes with uncontrolled organic HAP emissions of greater than 5 tpy are required to be controlled by 98 percent. Therefore, the definition of process determines what sources are included within a process grouping, which in turn affects applicable requirements and must be clearly specified in the final rule. In the proposed rule, we introduced the term family of materials to describe materials that vary only slightly in molecular structure, functional groups or other characteristics and are produced using procedures that result in essentially identical HAP emission streams from essentially identical emission sources. Our intent in requiring the grouping of these materials is to keep operators from artificially breaking them up into separate "processes" to avoid control requirements. We consider this concept to be important and have retained it in the final rule, with some modifications. Further, from our concept of "standard batch," we would say that each family of materials has the same "standard batch."

The standard batch concept was developed to allow owners and operators to identify and characterize emission events associated with a process. Once the emissions from each process are characterized, the owner or operator can merely count the number of batches conducted per year for each process to determine uncontrolled and controlled HAP emissions and compliance requirements. The standard batch concept provides a manageable way to document emissions; processes with the same identical standard batch should be considered the same process.

We agree with the commenters that our proposed definition did not adequately convey the concept of identical emission streams characteristics. We note that as long as groupings are also based on identical HAP emission characteristics, a grouping based on functionality is still compatible with the concept of having only one standard batch per process, which is a cornerstone of our compliance implementation strategy. Therefore, we have incorporated the suggested option so that the final definition requires identical emissions and either similar composition or functionality.

We reject the argument that the database is flawed because we did not require groupings when we surveyed

the industry. Although we did not require groupings, we encouraged respondents to group materials and provided guidance "that products that involve different HAP or different process equipment in case of dedicated processes should not be grouped together." This language is basically consistent with the family of materials concept, and we note that many processes in our database appear to be material groupings. Therefore, we did not revise the MACT floor or proposed standards for batch vents. We also have not incorporated the suggestion to exempt "individual products for which the manufacture results in less than 500 lb/yr uncontrolled HAP emissions for nondedicated batch operations" because this language is unnecessary and inappropriate. Although the commenter may not have provided information on individual products with less than 500 lb/yr (*e.g.*, the commenter could have grouped families and emissions would be over 500 lb/yr and required to be reported), we expect that some respondents applied the 500 lb/yr reporting test on families of materials, based on the substantive number of groupings reported. Thus, there is no basis for exempting individual products for which the manufacture results in HAP emissions below the suggested 500 lb/yr threshold. Finally, because the final rule makes no distinction between "batch" and "continuous" processes, but rather on batch and continuous emissions, we do not restrict the concept to batch "processes."

One commenter objected to the grouping of processes that are conducted in separate buildings and areas. Our proposed and final definition of process is not equipment specific. If the same product is manufactured in more than one set of equipment, emissions from all equipment must be considered when comparing to the 5 tpy mass applicability limit. The final rule is written this way because many manufacturers use nondedicated equipment to conduct their processes, and there is the potential that processing can be moved from one area to another easily to avoid regulation. Therefore, we do not restrict the family of materials grouping according to location.

Comment: Many comments addressed various concepts in the definition of miscellaneous organic chemical manufacturing process. Several commenters considered the definition to be too lengthy and confusing. Some suggested removing statements that do not define the process. Others asked for clarification of various terms used within the definition such as "nondedicated," "nondedicated solvent recovery," "equipment," and "product." Two commenters stated that "product or isolated intermediate" should be changed to "miscellaneous organic chemical product."

Several commenters objected to various requirements for nondedicated formulation operations. For example, some commenters opposed the requirement that all nondedicated formulation operations be considered a single process. They noted that the ICR did not request data for aggregated formulation operations and, thus, the MACT floor was based on separate formulation processes. Other commenters requested clarification of the term "contiguous area" as it relates to formulation operations. Several commenters found the exclusion for formulation operations that involve "mixing" to be confusing. They also requested that all formulation operations be exempt, not just those that are nondedicated and involve mixing, because none of these operations result in many emissions. One commenter expressed concern that estimating emissions for "hundreds" of small vents with minimal emissions for all the various formulated products would be burdensome, and control would be very costly. One commenter asked for an explanation of why nondedicated formulation operations (and nondedicated solvent recovery operations) are treated differently than other nondedicated operations.

Several commenters stated that cleaning operations should be part of the process only if they are routine and predictable because these are the only cleaning operations for which emissions can be estimated and included in a standard batch. Other commenters added that cleaning should not be part of the process if it involves opening of process vessels because there are no practical control methods for such events.

Response: Except for nondedicated solvent recovery and formulation operations, miscellaneous organic chemical manufacturing processes are product based, meaning that all equipment used to manufacture a product is to be included in determining process vent control. We think this product-based approach is necessary because owners and operators may have the flexibility to manufacture the same product in more than one distinct area in a way that would avoid control under an equipment-based standard. However, in the case of solvent recovery operations such as distillation operations, defining a process by product would mean that each separately recovered product would be a separate process, which would result in fewer "processes" triggering the control requirement for the same equipment. The same is true for nondedicated formulation operations, where various finished materials could be formulated for shipment or as final product. Considering these two types of nondedicated operations as single processes also likely reflects the way in which these operations are managed and permitted. Further, we think respondents reported their data following this convention. Often, these operations will vary only in the type of HAP used. If the same HAP solvent is used for a variety of products, the emission stream characteristics per batch will essentially be the same. Therefore, considering a number of these operations as a single process actually simplifies recordkeeping. Note, however, that the final rule contains two key exemptions for batch process vents that may exempt many of the emission sources contributing to "minimal" emissions that the commenter is describing (*i.e.*, 50 ppmv or 200 lb/yr).

Although our proposed definition excluded "mixing," we meant to exclude "mixing of coatings," since this operation is to be covered by 40 CFR part 63, subpart HHHHH. When a product is blended or mixed with other materials in equipment that is dedicated to the manufacture of a single product, the mixing is included as part of the miscellaneous organic chemical manufacturing process.

We wanted to limit nondedicated solvent and formulation processes to related operations within the same area, which is the reason for the language regarding "contiguous operations." However, we agree with one of the commenters that the term contiguous also conveys other meanings and, therefore, have revised the definition to refer to "each nondedicated solvent recovery (or formulation) operation." The intent is to limit the process to operations located within a distinct operating area.

We agree that nonroutine cleaning operations involving vessel openings should not be considered as part of a process because they are difficult to characterize within a standard batch. These emissions would be attributed to startup and shutdown events, which are addressed separately in the final rule. In some instances, however, cleaning that is conducted within enclosed equipment between batches or between campaigns should be considered part of a process; these operations often consist of conducting solvent rinses through the equipment. Emissions from these

operations are similar to emissions during processing and the final rule's emission estimation procedures are suitable for these events. Therefore, they can be included in a standard batch for a given product and can be practically implemented.

Comment: Some commenters are confused about how a process ends with the production of an "isolated intermediate" or product. One commenter stated that a process should end with the production of an isolated intermediate. Subsequent manufacturing operations using the intermediate should be considered part of a different process, and emissions from the operation should be managed separately from the emissions for the isolated intermediate process. A second commenter objected to the language in the proposal preamble that qualified the meaning of "stored" to be long-term storage, or that the material must be shipped offsite. The commenters stated that the term "storage" without qualification as to the length of storage or the purpose of storage is sufficient. A third commenter was concerned that the first sentence stated that an isolated intermediate is a "product," but the second sentence stated that many "isolated intermediates" many be produced in the manufacture of a product; and that to be an isolated intermediate, a material must be stored, but the definition of storage tanks specifically excludes tanks storing isolated intermediates. The commenter stated that the definition needs to define the end of an MCPU where that MCPU produces a material that is not itself a commercial product. Two commenters wanted clarification that the term isolated intermediate refers to an organic material and suggested changing the term to "isolated organic intermediate'; and four commenters suggested that the term be limited to batch processes.

Response: The concept of isolated intermediate is to identify a repeatable sequence of processing events that yield a material that is stable and subsequently stored before it undergoes further processing. The concept was introduced because many chemical processors have the capability to conduct intermediate processing steps in non-sequential order or even to conduct some processing steps offsite. Requiring an operator to consider all processing steps or campaigns that result in a final product may not yield a repeatable standard batch because of the possibility that not all steps would be conducted every time, or that some processing would depend on the availability of equipment and not be sequential; therefore, we limit the definition of process to the manufacture of an isolated intermediate. The concept that an isolated intermediate must be stored is important in that, if there is no "break" in the processing operations, there is no end of a process. We have, in the final rule, revised the definition of storage tank and process tank. Storage effectively occurs when material is stored and not processed over the course of a batch process. Therefore, we have eliminated the inconsistency regarding storage so that a storage tank can mark the end of a process if it is truly a storage tank and not a process tank, surge control vessel, or bottoms receiver. To limit confusion between listing the various vessel types that could be construed as process tanks, we eliminated the descriptive terms drums, totes, day tanks, and storage tanks.

We have not revised the definition to include the term "organic." Our proposed and final definition clearly indicates that the material must be described by 40 CFR 63.2435(b). We have not limited the term to batch processes because the revised definitions of storage tank, surge control vessel, and bottoms receiver, make this distinction unnecessary. Additionally, we avoided basing any requirements on the differences between batch and continuous "processes" because processes can often contain both batch and continuous operations. Finally, we agree that the term isolated intermediate also is necessary to clarify that a material that is not itself a commercial product can be considered a product of a process.

B. How Did We Change the Compliance Dates?

Comment: Several commenters stated that area sources that become major sources should have 3 years to comply. The commenters indicated that the proposed requirement to comply within 1 year deviates from 40 CFR 63.6(c)(5) of the General Provisions and requirements in other rules, and the proposal preamble provides no justification for the shorter time period. One commenter also noted that there is no difference in the level of effort needed to comply relative to that for a major source.

Response: We agree to reference the General Provisions directly for compliance requirements for an area source that becomes a major source. We consider the 3-year period that the General Provisions allows for areas sources to come into compliance after becoming major sources to be adequate time. The proposed rule was published on April 4, 2002 and the anticipated compliance date is August 2006. Area sources becoming major sources after the effective date will have 4-plus years to become familiar with the applicability of 40 CFR part 63, subpart FFFF. An area source that becomes a major source between the effective date and the compliance date also has 3 years to come into compliance, except if it adds a new affected source (*e.g.*, a dedicated MCPU with the potential to emit 10 tpy of any one HAP or 25 tpy of combined HAP).

Comment: One commenter operates an offsite treatment facility that could receive wastewater from affected sources under 40 CFR part 63, subpart FFFF. This commenter expressed concern with the requirement that existing sources be in compliance 3 years after the effective date of the final rule because they might not even receive affected wastewater until sometime after the compliance date. Therefore, the commenter suggested adding a new § 63.2445(f) to read as follows: "If you have an offsite treatment operation that receives affected wastewater or residue prior to the effective date of this subpart, then you must comply with the requirements for offsite treatment operations in this subpart no later than the date 3 years after the effective date of the subpart. If you have an offsite treatment operation that receives affected wastewater or residue after the effective date of this subpart, then you must comply with the requirements for offsite treatment operations in this subpart prior to receipt of an affected wastewater or residue."

Response: The proposed rule specified that affected wastewater (*i.e.*, "Group 1" wastewater in the final rule) that is sent offsite for treatment would be subject to § 63.132(g) of the HON. Those provisions require the offsite facility to comply with §§ 63.133 through 63.147 for any Group 1 wastewater that they receive. The commenter was concerned that an offsite treatment facility would be considered to be an existing source and might be unable to demonstrate initial compliance (*i.e.*, implement the design and operational requirements for waste management units and determine the performance of control devices and treatment processes) by the compliance date if the facility is not now receiving Group 1 wastewater and the operators are unaware whether the facility may receive such wastewater at some point in the future.

We did not add the suggested language because the proposed language is clear and already satisfies the commenter's concerns. Although an

offsite treatment facility will be required to meet the wastewater standards and associated compliance provisions if it accepts wastewater from an affected source, the offsite treatment facility is not an affected source. Therefore, the compliance date specified in § 63.2445 does not apply to an offsite treatment facility. The burden is also on the affected source operators to inform the offsite treatment facility of their intent, determine if the offsite facility is willing to handle the wastewater, and allow the offsite treatment facility time to achieve initial compliance before the first shipment.

C. How Did We Develop the Standards?

Comment: One commenter stated that EPA unlawfully failed to set standards for all HAP emitted by the source category. According to the commenter, examples of HAP for which standards were not set include inorganic HAP such as HCl, HF, Cl_2, potassium compounds; and organic HAP such as maleic and phthalic anhydrides. As support, the commenter referenced *National Lime Association* v. *EPA*, 233 F.3d 625 (D.C. Cir. 2000). Conversely, other commenters noted that the rule as proposed regulates both inorganic and organic HAP, but they suggested it should regulate inorganic HAP only when generated by the combustion of halogenated organic HAP. Some of these commenters stated that focusing on just organic HAP would be consistent with EPA's CAA section 114 data collection, the corresponding MACT floor analysis, and the approach used in other MACT standards. Two commenters noted that EPA recognized the inherent differences in the physical/chemical nature of inorganic HAP and the different technologies required for their control and specifically excluded inorganic HAP from the MACT floor analysis. The two commenters also stated that other standards, such as the HCl Production MACT, already adequately address inorganic HAP reduction requirements. Should EPA decide to regulate inorganic HAP, two commenters indicated that we should conduct additional MACT floor analyses and then propose separate standards for organic and inorganic HAP.

Response: At proposal, our intent was that all types of gaseous HAP would be subject to the batch and continuous process vent standards. Similarly, the proposed storage tank standards would apply to all gaseous HAP, provided the maximum true vapor pressure for the total HAP in the storage tank exceeded the specified threshold. However, standards for the remaining emission source types are based on the compounds regulated by the HON, which covered organic HAP only. Standards for transfer operations and equipment leaks would also apply to any individual organic HAP or combination of organic HAP that meet a partial pressure threshold. Wastewater standards would apply only to those organic HAP that have the potential to volatilize from water based on modeling analyses conducted during development of the HON.

In response to the comments, we decided to develop a MACT floor and standards for hydrogen halide and halogen HAP (*i.e.*, HCl, HF, and Cl_2) emissions from process vents that are separate from the analysis for organic HAP emissions. Based on data obtained in responses to the original ICR, this MACT floor was determined to be 99 percent control of hydrogen halide and halogen HAP from the sum of all vents in processes with uncontrolled hydrogen halide and halogen emissions equal to or greater than 1,000 lb/yr. We did not receive any information regarding source reduction techniques for hydrogen halide and halogen HAP. Generally, we would expect that these compounds are emitted as products of reaction, and there may be less opportunity for source reduction from these types of process vent emissions when compared to organic HAP. However, we structured the MACT floor to consider measures of reducing HAP emissions other than add-on control by basing the MACT floor on a percent reduction above some uncontrolled emission value. By default, implementing source reduction measures reduces "uncontrolled emissions." The performance level of 99 percent is the highest control level achievable across the source category and is achieved by about 50 percent of the processes. The primary control devices used in the industry are packed-bed scrubbers. Control efficiencies for hydrogen halides (acid gases) and halogens depend on the solubility of the HAP in the scrubbing liquid, which in turn will vary with the processes that emit them. Control device vendors estimate that removal efficiencies for inorganic gases range from 95 to 99 percent (EPA–CICA Fact Sheet: Packed-Bed/Packed-Tower Scrubber). Therefore, although the reported control efficiencies for some processes were in excess of 99 percent, levels greater than 99 percent may not be uniformly achievable under all operating conditions. The best performing of these sources are those with the lowest uncontrolled emissions from the sum of all vents within the process. Therefore, we ranked all processes controlling hydrogen halide and halogen emissions to at least 99 percent by their uncontrolled emissions, from lowest to highest. For the best-performing 12 percent of processes, the median uncontrolled emissions rate is 1,000 lb/yr.

In setting the MACT floor for existing sources, we considered whether sources may be using emission reduction techniques other than technological controls for hydrogen halide and halogen HAP to determine whether such techniques might provide the basis for a floor. However, we did not receive any information regarding emission reduction techniques for these HAP in response to our ICR request that sources provide such information. Accordingly, we do not have information indicating that a sufficient percentage of sources are using emission reduction techniques for hydrogen halide and halogen HAP to enable us to set a MACT floor based on such techniques. Generally, we expect that because these HAP are emitted as products of reaction, there may be fewer opportunities to reduce process vent emissions of these HAP than there are opportunities to reduce emissions of organic HAP. (Organic HAP are frequently present in solvents, and solvent use can often be reduced; by contrast, reducing emissions of reaction products is more difficult because fundamental process changes are typically necessary.) Again, however, we do not have any information about the use of emission reduction techniques with which to support a floor determination.

Nevertheless, sources may use the pollution prevention option set out in 40 CFR part 63, subpart FFFF, to meet the 1,000 lb/yr cutoff for process vent emissions of hydrogen halide and halogen HAP and thereby comply with the relevant standards.

For new sources, the MACT floor is the same as for existing sources because reported control efficiencies in excess of 99 percent are not reliable. The final standards for hydrogen halide and halogen HAP emissions from process vents are also based on the MACT floor because the total impacts of a regulatory alternative were determined to be unreasonable.

Based on comments received, we decided to review our available data and develop a MACT floor for HAP metals in the form of PM, which acts as a surrogate for them. Our database shows six facilities emit PM HAP (specifically various metal compounds). One of the six facilities is controlling emissions from three processes with three different control devices, and the lowest control

efficiency is 97 percent. Since there are only six sources, the MACT floor for existing sources is based on the average performance of the top five sources. Since only one of the top five sources is implementing control, we determined the MACT floor is no emissions reduction. The final standard is based on the MACT floor because the total impacts of a regulatory alternative were determined to be unreasonable.

In setting the MACT floor, we considered whether some facilities may implement emission reduction measures to reduce PM HAP emissions, instead of using control technologies. We requested information on emission reduction measures in our section 114 information request. Of the approximately 40 different process changes reported, however, only one facility reported a process change that could be directly associated with PM emissions, which was described as "removing a hopper and vent." Further, we do not know whether this emission reduction measure was effective in reducing PM HAP emissions. Therefore, because we lack information indicating that a sufficient number of process vents employ such measures to reduce emissions of PM HAP to set a floor, we were unable to set a MACT floor based on emission reduction measures.

The new source MACT floor for PM HAP emissions is based on the control achieved by the best-performing source. As noted above, the best-performing source is routing emission streams from three processes to three different control devices: a baghouse (fabric filter), a spray chamber and a rotoclone. The baghouse (fabric filter) achieves 97 percent control and this level is considered the emission control level that is achieved in practice by the best-controlled similar source, even though the other control devices report higher control efficiencies. Particulate control efficiencies are influenced by factors such as filtration velocity, particle loading, and particle characteristics, which in turn vary depending on the processes that emit them. Variations in stream characteristics make it difficult to conclude that the higher reported control efficiencies for the other control devices could be achieved in practice by all process vents that emit PM HAP. Based on ranking of the sources achieving 97 percent according to each source's lowest uncontrolled PM HAP emission level, the best-performing source is the lowest uncontrolled PM HAP emission level for any of the controlled processes (i.e., 400 lb/yr). Thus, the new source MACT floor for PM HAP emissions from process vents is 97 percent control for each process with uncontrolled PM HAP emissions greater than or equal to 400 lb/yr.

Comment: One commenter stated that we unlawfully exempted emission points from regulation by establishing applicability cutoffs for both new and existing sources. The commenter stated that the rule must apply to all sources as required under the CAA, and, thus, cutoffs are illegal; and for wastewater, transfer operations, and equipment leaks, EPA illegally borrowed cutoffs and MACT floors from other standards. The commenter stated that standards must reflect the actual performance of the best-performing sources in the miscellaneous organic chemical manufacturing category. The commenter objected to 98 percent control levels for the process vent floors because reported control efficiencies for many process vents exceeded 98 percent. Finally, the commenter objected to the use of a work practice standard for equipment leak controls. Conversely, several other commenters suggested that the rule should specify additional thresholds below which a source would be considered to have "insignificant HAP emissions" and be exempt from control.

Response: We disagree that every emission point at a major source must be required to reduce emissions. First, section 112(a) of the CAA defines "stationary source" (through reference to section 111(a)) as: "* * * any building, structure, facility, or installation which emits or may emit any air pollutant * * *." (42 U.S.C. §§ 7412(a)(3) and 7411(a)(3)). The General Provisions for the MACT program define the term "affected source" as "the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112." (40 CFR 63.2). Nothing in the definition of "stationary source" or in the regulatory definition of "affected source" states or implies that each emission point or volume of emissions must be subjected to control requirements in standards promulgated under section 112.

Further, even under the commenter's interpretation of "stationary source," the Agency would still have discretion in regulating individual emission sources. Section 112(d)(1) allows the Administrator to "distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards * * *." We interpret this provision for the miscellaneous organic chemical manufacturing NESHAP, as we have for previous rules, as allowing emission limitations to be established for subcategories of sources based on size or volume of materials processed at the affected source. Under the discretion allowed by the CAA for the Agency to consider "sizes" of sources, we made the determination that certain small-capacity and low-use operations (e.g., "smaller" storage tanks) can be analyzed separately for purposes of identifying the MACT floor and determining whether beyond-the-floor requirements are reasonable. In addition, our MACT floor determinations for certain categories (e.g., process vents), which are set according to section 112(d)(3) of the CAA, reflect the performance levels and "cutoffs" of the best-performing sources for which we had information.

In general, our MACT floor determinations have focused on the best-performing sources in each source category, and they consider add-on control technologies as well as other practices that reduce emissions. As part of our information collection effort, we requested information on emission source reduction measures. We generally did not receive information indicating that, for the emission points covered by 40 CFR part 63, subpart FFFF, sources are currently reducing emissions by means other than control technologies in sufficient numbers to support a MACT floor based on source reduction measures. Accordingly, our standards include a performance level that represents the level achieved by the best control technology, and a cutoff that represents the lowest emission potential that is controlled by the best 12 percent of sources. Because the miscellaneous organic chemical manufacturing source category is broad in terms of the numbers and types of processing operations that are covered, one challenge was to develop a format by which all sources could be compared to each other to establish the best-performing sources. The performance level generally is of the format that can be applied to different types of control technology and processes and is generally consistent with existing rules. Thus, different types of control technology and emission levels resulting from existing rules are captured in our MACT floor analysis. The cutoff allows owners and operators that have reduced their emissions below a certain level using one or more methods, including process changes to reduce or eliminate pollution at the source, to comply without additional control. Both performance levels and cutoffs have been set to account for variations in emission stream

characteristics so that the standards can be applied consistently across the source category. We believe that this approach is consistent with the language of section 112(d)(3) that requires us to set the MACT floor based on the best-performing 12 percent of existing sources.

Aside from the MACT floor determinations, we also provided a pollution prevention compliance alternative to allow compliance with the standards by demonstrating a reduction in HAP usage per unit of product. This alternative enables owners and operators to comply using emission source reduction measures.

The above discussion notwithstanding, we decided to conduct a MACT floor analysis for storage tanks with capacities less than 10,000 gal. We concluded that the MACT floor for small tanks at existing sources is no emissions reduction because we have information from only eight sources that is not sufficient for setting a floor, and only one of the best-performing five sources is implementing controls. We did not specifically request information for tanks with capacities of less than 10,000 gal. Based on earlier EPA studies on the organic compound manufacturing industry (EPA–450/3–90–025), we estimate the actual number of storage tanks with capacities of less than 10,000 gal in our source category to be 30 percent of the total number of tanks, or approximately 500 tanks. The eight facilities reported information on 19 tanks, which is not enough information to set the floor. We also based the standard for existing storage tanks with capacities less than 10,000 gal on the MACT floor, because a regulatory alternative was determined to be unreasonable.

As for the new source MACT floor for storage tanks with capacities less than 10,000 gal, the best-performing source is controlling emissions from two small tanks by 98 percent with thermal incineration. One tank has a capacity of 9,800 gal and is storing material with a HAP partial pressure of 0.373 psia. The other tank has a capacity of 8,000 gal and is storing material with a HAP partial pressure of 0.574 psia. We consider the first tank to be more stringently controlled because partial pressure is the best indicator of emission potential and controlling a lower partial pressure is an indication of greater stringency. We compared this tank's characteristics to the new source MACT floor for larger tanks, which was set at 95 percent control for tanks with capacities of greater than 10,000 gal and storing materials with HAP partial pressures of 0.1 psia or higher. From an analysis of the tanks in our database, we concluded that the new source MACT floor for larger tanks is more stringent than a floor based on 98 percent reduction for tanks storing material with a HAP partial pressure greater than or equal to 0.4 psia. Therefore, we concluded the new source MACT floor as proposed to be appropriate for all tanks.

Finally, we do not have any information indicating that storage tanks with capacities less than 10,000 gal are reducing emissions through measures other than control technologies. Accordingly, we lacked sufficient information to set a floor based on such measures.

The MACT floors for organic HAP emissions from batch and continuous process vents are 98 percent control because this level has been shown to be uniformly achievable by well-designed and operated combustion devices. During development of the HON, the EPA recognized that thermal incineration may achieve greater than 98 percent reduction in some cases, but test data show that levels greater than 98 percent may not be uniformly achievable under all operating conditions (59 FR 19420, April 22, 1994). Similarities in processes and resulting emission streams in this industry with that of the HON source category processes allow us to draw the same conclusions with regard to achievable combustion control efficiencies. A review of the batch process vent database indicates that most processes with overall control of 98 percent or greater are controlled using thermal incinerators and flares (110 of 132 processes). We found the performance level for the MACT floor to be 98 percent because as much as 15 percent of the 731 processes in the database were controlled by thermal incineration. Similarly, a review of the continuous process vent database indicates that most processes with overall control of 98 percent or greater are controlled using thermal incinerators and flares (31 of 37 processes). We found the performance level for the MACT floor to be 98 percent because as much as 15 percent of the 202 processes in the database were controlled by thermal incineration. We did not use reported control efficiencies for scrubbers used to control organic HAP because we do not know the fate of pollutants captured in the scrubber effluent. If some of these pollutants are re-released to the air, then the reported control efficiencies are not valid.

For equipment leaks, we considered various formats for the standard and determined that a work practice standard based on an LDAR program is the most feasible. Unlike other emission sources, leaking components are not deliberate emission sources but rather result from mechanical limitations associated with process piping and machinery. A well-managed facility follows a preventive maintenance program to minimize leaks, but in all practicality cannot guarantee that no leaks will occur. Therefore, an emission standard for equipment leaks would not be feasible to enforce or prescribe. At the same time, our data indicate that the MACT floor for equipment leaks is an LDAR program. We also developed regulatory alternatives on the use of more effective LDAR programs. Finally, we note that enclosing components and venting to control is allowed, but except in limited cases, we expect the cost to be prohibitive.

Regarding the other commenters' suggestions, we note that the standards for all types of emission points contain cutoff values, consistent with our MACT floors, below which sources are exempt from control. We also concluded that our information did not allow us to develop a relationship between the various emission source types such that we could identify "insignificant" sources merely by the sum of actual emissions from process vents.

Comment: One commenter stated that we failed to properly evaluate beyond-the-floor options. According to the commenter, in some cases, we stated that the MACT floor option was the most stringent option without identifying or evaluating other options (*e.g.*, LDAR for equipment leaks was assumed to be the most stringent option). In other cases, the commenter noted that the beyond-the-floor option is simply a lowering of the cutoff, and as discussed above for the MACT floor, the commenter stated that cutoffs should not be allowed. Also, where 98 percent control is the MACT floor, the proposed rule did not address why a beyond-the-floor option was not selected where data showed higher reductions are being achieved.

Response: Our beyond-the-floor options reflect the most stringent performance levels that have been proven and can be applied consistently across our source category. It is true that in many cases, the beyond-the-floor option was based on simply lowering a cutoff, similar to the discussion above for new sources. This is consistent with the intent of section 112(d)(3) because better-performing sources have lower cutoffs.

For example, for batch process vents at existing sources, we evaluated the

feasibility of a regulatory alternative that would require 98 percent control of batch process vents in processes with uncontrolled organic HAP emissions between 5,000 and 10,000 lb/yr. We concluded that the total impacts of this alternative are unreasonable in light of the HAP emission reductions achieved. The incremental HAP reduction achieved by this above-the-floor alternative is 145 Mg/yr, and the incremental cost is about $15,000/Mg of HAP controlled. The incremental electricity consumption to operate exhaust gas fans is 5.1 million kilowatt hours per year (kwh/yr). The incremental steam consumption for steam-assist flares is 6 million lb/yr. The incremental fuel energy consumption to operate incinerators and flares and to generate electricity is 340 billion British thermal units (Btu) per year. Total CO, NO_X and SO_2 emissions from combustion of the additional fuel is about 66 Mg/yr. There would be no wastewater or solid waste impacts.

We evaluated the feasibility of a regulatory alternative that would require 98 percent control of organic HAP emissions from continuous process vents that have a TRE index value between 1.9 and 5.0 at existing sources. We concluded that the total impacts of this alternative are unreasonable in light of the HAP emission reductions achieved. The incremental HAP reduction achieved by this above-the-floor alternative is about 400 Mg/yr, and the incremental cost is about $29,000/Mg of HAP controlled. The incremental electricity consumption to operate exhaust gas fans is 28 million kwh/yr. The incremental steam consumption for steam-assist flares is 83 million lb/yr. The incremental fuel energy consumption to operate incinerators and flares, generate steam, and generate electricity is 2.4 trillion Btu per year. Total CO, NO_X, and SO_2 emissions from combustion of the additional fuel is 400 Mg/yr. There would be no wastewater or solid waste impacts.

We evaluated the feasibility of a regulatory alternative that would require 99 percent control of hydrogen halide and halogen emissions from processes with uncontrolled hydrogen halide and halogen emissions between 500 and 1,000 lb/yr at existing sources. We concluded that the total impacts of this alternative are unreasonable in light of the emission reductions achieved. The incremental HAP reduction achieved by this beyond-the-floor alternative is 1.0 Mg/yr, and the incremental cost is about $90,000/Mg of HAP controlled. The incremental electricity consumption to operate exhaust gas fans is 31,000 kwh/yr, and the incremental fuel energy consumption to generate the electricity is 300 million Btu per year. Total CO, NO_X, and SO_2 emissions from the combustion of the additional fuel is 0.27 Mg/yr. The incremental wastewater generated from scrubber controls is 400,000 gal/yr.

We evaluated the feasibility of a regulatory alternative that would require 97 percent control of PM HAP emissions from process vents at existing sources if the uncontrolled PM HAP emissions exceeded 400 lb/yr. The only facility that meets the threshold for control is already controlled. Thus, we concluded that the total impacts of this alternative are unreasonable in light of the emission reductions achieved for a model facility that was based on the characteristics of the controlled facility. The incremental HAP reduction achieved by the above-the-floor alternative for the model facility is 4.3 Mg/yr, and the incremental cost is $68,000/Mg of HAP controlled. The incremental electricity consumption to operate exhaust gas fans is about 24,000 kwh/yr, and the incremental fuel energy consumption to generate the electricity is 230 million Btu per year. Total CO, NO_X, and SO_2 emissions from combustion of the additional fuel is 0.2 Mg/yr. The quantity of solid waste generated could be greater if the owner or operator elects to use a dust collector that includes water sprays and discharges the collected dust in a slurry form.

For wastewater, we considered a regulatory alternative that would require HON-equivalent control of wastewater streams at existing sources that contain soluble HAP at concentrations between 15,000 ppmw and 30,000 ppmw or that contain partially soluble or mixed HAP at flowrates between 0.5 and 1.0 lpm. We concluded that the total impacts of this alternative are unreasonable in light of the emission reductions achieved. The incremental HAP reduction achieved by this above-the-floor alternative is 160 Mg/yr, and the incremental cost is about $8,500/Mg of HAP controlled. The incremental electricity consumption to operate pumps is 45,000 kwh/yr. The incremental steam consumption for steam strippers is 8.0 million lb/yr. The incremental fuel energy consumption to generate electricity and steam is 12 billion Btu per year. Total CO, NO_X, and SO_2 emissions from the combustion of additional fuel to generate the electricity and steam is 1 Mg/yr. There may also be solid waste impacts if condensed steam and pollutants from the steam stripper cannot be reused. Small amounts of wastewater in the form of blowdown from the cooling water system for the condenser may also be generated.

For storage tanks at existing sources, we examined two regulatory alternatives. First, for storage tanks with capacities of at least 10,000 gal, we considered an alternative that would require an internal floating roof, external floating roof, or at least 95 percent reduction if the partial pressure of HAP stored in the tank is between 0.5 and 1.0 psia. We concluded that the total impacts of this alternative are unreasonable in light of the emission reductions achieved. The incremental HAP reduction achieved by this above-the-floor alternative is 30 Mg/yr, and the incremental cost is $19,000/Mg of HAP controlled. The incremental electricity and fuel consumption rates for storage tanks controlled with refrigerated condensers are 16,000 kwh/yr and 155 million Btu per year, respectively. Total CO, NO_x, and SO_2 emissions from combustion of additional fuel is 0.13 Mg/yr, and there would be no wastewater or solid waste impacts. There also would be no environmental impacts or energy impacts for other storage tanks controlled with floating roofs. The second regulatory alternative that we considered would require 95 percent control for storage tanks with capacities less than 10,000 gal. We concluded that the total impacts of this alternative are unreasonable in light of the emission reductions achieved. On an average tank basis, the incremental HAP reduction achieved by this above-the-floor alternative is less than 0.5 Mg/yr, and the incremental cost would be on the order of $200,000/Mg of HAP controlled. The incremental electricity and fuel energy consumption rates for storage tanks controlled with refrigerated condensers are about 3,100 kwh/yr and 30.0 million Btu per year, respectively. Total CO, NO_x, and SO_2 emissions from combustion of the additional fuel are about 0.025 Mg/yr. There would be no wastewater or solid waste impacts.

Regarding the specific situation described by the commenter in which we did not propose a more stringent option than the equipment leaks LDAR program, we are not aware of any option that could be applied consistently across the source category that would be effective. For example, enclosing all components and venting to control is allowed for process piping located inside of buildings or enclosures, but except in limited cases, we would expect the costs of such an option to be prohibitive. Furthermore, we have developed a revised MACT floor that consists of an LDAR program consistent with the requirements specified in 40 CFR part 63, subpart TT. We then

evaluated a regulatory alternative based on the more comprehensive LDAR program specified in 40 CFR part 63, subpart UU. We determined that this alternative is reasonable for processes that have at least one continuous process vent, but the costs are unreasonable for other processes. Because the regulatory alternative is implementation of a more stringent LDAR program, there are essentially no energy impacts or non-air quality health and environmental impacts associated with the regulatory alternative.

Finally, we did not evaluate a regulatory alternative for transfer operations because the floor is at the most stringent known requirements.

Comment: Several commenters recommended referencing the Generic MACT at 40 CFR part 63, subparts SS, UU, and WW, in their entirety to specify all of the initial compliance, monitoring, recordkeeping, and reporting for process vents, transfer operations, storage tanks, closed-vent systems, and equipment leaks. Commenters also recommended referencing §§ 63.132 through 63.149 (and their associated recordkeeping and reporting requirements in §§ 63.151 and 63.152) of the HON for all of the requirements for process wastewater streams and liquid streams in open systems within MCPU, although one commenter recommended referencing the closed-vent system requirements in subpart SS instead of the comparable requirements in the HON. According to the commenters, the piecemeal referencing in the proposed rule was confusing and it expanded some requirements relative to the other subparts and missed some requirements in those subparts, which resulted in inconsistencies. A particular concern was that the proposed approach excluded the use of fuel gas systems and routing emission streams to a process.

Response: To simplify and streamline the final rule and minimize the compliance burden, we decided to provide more complete references to the other rules with exceptions and additions only where needed. For example, we modified the hierarchy of compliance applicability in § 63.982(f) of the final rule; we overrode some of the initial compliance procedures in 40 CFR part 63, subpart SS, with the procedures in 40 CFR part 63, subpart GGG, for control devices used to control batch process vents; we retained the vapor balancing alternative in subpart GGG for storage tanks; we have specified different thresholds for Group 1 wastewater streams; we referenced 40 CFR part 63, subpart TT, rather than 40 CFR part 63, subpart UU, for equipment leaks in processes with no continuous process vents; we have specified periodic verification procedures rather than continuous monitoring for control devices with inlet HAP load less than 1 tpy; we have allowed averaging periods of operating blocks as well as operating days for batch operations; we retained the recordkeeping concept as proposed based on operating scenarios; we retained the precompliance report; and we have specified recordkeeping and reporting requirements for "deviations."

Comment: Two commenters requested that sources be allowed to follow the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Consolidated Federal Air Rule (CAR) for continuous process vents, storage tanks, equipment leaks, and transfer operations so that a facility with HON and miscellaneous organic chemical manufacturing processes can comply with a consistent set of requirements. The commenters stated that the maximum use of standardized programs such as the CAR will provide the maximum flexibility to a facility nominally covered by multiple MACT rule requirements. One commenter stated that the American Chemistry Council, EPA, and many other stakeholders developed the CAR as the lowest burden, clearest, and most consistent set of requirements possible for the chemical industry using the HON model and understood that the CAR rule would be a model for future chemical industry rules.

Response: The CAR was developed to provide a consolidated set of requirements applicable to storage vessels, process vents, transfer racks, and equipment leaks within the SOCMI. The CAR eliminates the overlapping requirements of numerous new source performance standards (NSPS) and NESHAP for the SOCMI that affect the same processes and equipment. These same requirements have also been codified in the Generic MACT at 40 CFR part 63, subparts SS, UU, and WW. Therefore, a facility with both HON and miscellaneous organic chemical manufacturing processes can essentially comply with the same set of requirements (*i.e.*, the HON processes would use the CAR, and the miscellaneous organic chemical manufacturing processes would follow the Generic MACT). We think that the reference in 40 CFR part 63, subpart FFFF, to the Generic MACT standards already provides the opportunity to consolidate across a facility, and except for equipment leaks, we do not see a benefit to cross-referencing another identical set of standards. We decided to specify in the final rule that you may elect to comply with equipment leak requirements in the CAR because the CAR is equivalent to or more stringent than the requirements in subpart FFFF.

D. Standards for Process Vents

Comment: Numerous commenters suggested that we adopt the definition of "batch process vent" from the Polymer and Resins IV NESHAP. The commenters noted that this definition includes an applicability cutoff level of 500 lb/yr. Some of the commenters justified using this cutoff, or a similar mass-based limit, for the miscellaneous organic chemical manufacturing source category because 50 percent of batch process vents in the database emit less than 500 lb/yr and account for only 0.2 percent of total emissions, it would be more enforceable, and it would not be affected by dilution. One commenter suggested adding exemptions for vents used less than 300 hours per year (hr/yr) or emitting less than 1,000 lb/yr because batch processes often have hundreds of minor vents that are used only occasionally or have minimal emissions, and it would be prohibitively expensive to control these vents. Other commenters supported the 50 ppmv minimum control threshold but suggested that the concentration should be based on annual average vent HAP concentrations and emissions averaged over numerous emission episodes. They suggested using the existing annual average batch vent flowrate and annual average batch vent concentration equations found in § 63.1323 of subpart JJJ. Many commenters also requested exclusions for opening of process equipment for material addition, inspection, and for health and safety vents. The commenters indicated that the exclusion for opening equipment is supported by the EPA database because those facilities that reported fugitive emissions from batch operations did not control them. Furthermore, the commenters cited the precedent of the Offsite Waste and Recovery Operations MACT, which relieves operators of the requirement to vent emissions through a closed-vent system during sampling of tank contents and removal of sludges.

Response: In general, we agree with the comments relating to adding a mass cutoff comparable to the 50 ppmv concentration limit. The use of a mass cutoff may be simpler than calculating the concentration in some situations, such as where emissions are known, but not the total volume of air in the system or the duration of an emission event (*e.g.*, emissions data developed from a mass balance). Being allowed to exclude vents based on emissions in addition to concentration may simplify the applicability determination procedure

in some cases. However, we determined that a lower cutoff than the 500 lb/yr is more appropriate. Of the approximately 1,500 process vents with concentrations less than 50 ppmv, the average (mean) mass emission rate is about 235 lb/yr. To establish a mass cutoff in the final rule that corresponds to the 50 ppmv concentration, we rounded this value to 200 lb/yr. If more than one emission episode contributes to a process vent, or if process vents within a process are piped or ducted together, the cutoff applies to the combined total.

The averaging period for determining the concentration was not specified in the proposed process vent definition; however, the proposed rule essentially required emissions to be calculated for each emissions episode. This means the averaging time for a concentration determination is over a single emission episode. The equations found in § 63.1323 of subpart JJJ would divide the total mass per batch by 8,760 hr/yr, which is not our intent. Therefore, we did not revise the definition to be consistent with the definition in subpart JJJ, but we have clarified that the concentration cutoff applies to emission episodes. The mass cutoff discussed above also applies to emission episodes. Thus, if a gas stream from any one episode meets the 50 ppmv cutoff, the process vent is affected.

Streams with less than 50 ppmv were specifically exempted from the vent definition to limit the introduction of dilution gases containing little to no HAP into emission streams as a means of diluting them and exempting them from control. Allowing averaging between streams of less than 50 ppmv with other emission episodes, as the commenters suggested, would effectively allow such dilution.

Therefore, we do not allow averaging across episodes to yield an average concentration for the purposes of determining whether a stream is affected.

We have decided to exempt some emissions releases that result from safety and hygiene practices because it is unlikely that these vents would reach the 50 ppmv concentration level. The exemption also will relieve owners and operators from the burden of demonstrating that they meet the concentration level. Specifically, the definition of "batch process vent" excludes flexible elephant trunk systems that draw ambient air (i.e, systems that are not ducted, piped, or otherwise connected to the unit operations) away from operators that could be exposed to fumes when vessels are opened.

We also note that although equipment openings without the presence of capture hoods and vents were not addressed specifically in the proposed rule, they would be subject to the provisions for certain liquid streams in open systems inside processes. Under these provisions, if the equipment meets the specified design and operating characteristics (*e.g.*, a tank with a capacity greater than 10,000 gal), then routine opening of the equipment would not be allowed. Also, opening events that are not routine and conducted as part of maintenance activities can be addressed in the facility's SSMP. Finally, regarding the commenter's request to exempt emergency vents, the SSMP can be used to address these events as well.

Comment: One commenter stated that MACT floors must be based on an average of existing regulatory limits, not on actual emissions data. According to the commenter, using actual emissions data violates section 302(k) of the CAA.

Response: We disagree with this comment. Nothing in section 302(k) of the CAA prohibits the use of actual emission data in setting MACT floors. The MACT floor was developed using all available information. The evaluation included, but was not limited to, information about existing regulatory limits. We also collected information from sources in the industry and States during 1997 that was the source of actual emissions data. A CAA section 114 ICR was sent to 194 facilities in the spring of 1997. The facilities which received the ICR were identified from EPA's 1993 toxic release inventory database which included information on facilities in SIC codes 282, 284, 286, 287, 289, or 386. Information on continuous processes came from emissions and permit databases from the following States: Texas, Louisiana, North Carolina, Illinois, Missouri, California, and New Jersey.

Comment: One commenter stated that the methodology utilized in determining the MACT floor for batch processes fails to accurately reflect the processes of the adhesives and coatings industry because, to the best of the commenter's knowledge, none of the 11 companies that own all of the sources in the MACT floor analysis makes adhesives. Other commenters noted that air-bearing vents, which cannot safely go to a flare or incinerator, should be considered separately from non-air-bearing vents because it is much harder to obtain high control efficiencies without using a combustion device. One commenter requested that spray dryer operations and post-spray dryer solids handling systems be excluded from the MCPU because the commenter is unaware of any facilities currently controlling such emission streams, it would be very costly to control such streams, and spray dryers are not specifically discussed in the MACT floor documentation.

Response: In the development of our database, we solicited information from a number of industries thought to be representative of this source category. Processing operations such as the synthesis of resins or polymers that are used as bases for adhesives are expected to result in emission sources with characteristics similar to other specialty chemical processes in this source category. Therefore, we expect the emission stream characteristics of the adhesives industry to have similar characteristics as those of other industries covered by this source category and have, therefore, not developed a separate category for this industry.

We disagree with the suggestion to consider air-bearing vents separately from other vents in the development of the MACT floor. Roughly half of the process vents in our batch process vents database have concentrations of 50 ppmv or less. These streams, which include many air-bearing streams from dryers and other sources, were exempt from the definition of process vent in the proposed rule because we recognize that it is not technically or economically feasible to require control of these streams. For process vents containing greater than 50 ppmv HAP, the final rule also allows compliance by meeting an outlet concentration limit as an alternative to a percent reduction standard. This alternative is provided to assist owners and operators in complying with the standards for low concentration streams.

Our process vent database includes spray dryers at two facilities. It also includes over 25 records for "dryers" at other facilities, some of which may pertain to spray dryers. As noted above, our database also includes air-bearing vents, which have characteristics likely to resemble those of emission streams from spray dryers. Therefore, we determined that these emission sources are represented in our database, and that the MACT floor properly sets the level of control for these vent streams.

Comment: Various commenters indicated the MACT floor for continuous process vents should be recalculated because of the following perceived problems with the database and analysis: a process vent at the BP Chemicals, Wood River plant (formerly Amoco Petroleum Additives), should be

removed from the database because no such vent ever existed; the database includes errors such as emission points that are not continuous process vents; the analysis was conducted on a facility basis rather than a vent basis; flowrate assumptions are too high; the sample population is too small; and the database is skewed by a disproportionate number of sources in ozone nonattainment areas.

Response: To develop the MACT floor for continuous process vents, we relied on available information from State permitting databases. To the best of our knowledge, these data reflect the sources that will be subject to requirements for continuous process vents. Although many of these facilities are in ozone nonattainment areas, the commenters have provided no evidence that this is not representative of sources that will be subject to the final standards. We disagree with the commenter's assertion that the analysis should be conducted on a vent basis rather than a facility basis. Our analysis was designed to identify what level of emissions would not be controlled by facilities that would be considered the best-controlled sources in the industry. That level of emissions, characterized by the vent with the highest TRE index value below which all other vents were controlled, became the TRE cutoff value for the facility. We consider the analysis valid and in keeping with the statutory MACT requirements of CAA section 112(d)(3). Regarding our assumption of flowrate in cases where no flowrate data were available, we note that our assumed flowrate is the average of the available flowrates. In response to the objection that the sample population was too small, we note that it is derived from many of the major chemical producing States, and we estimate that it represents about half of the affected sources with continuous process vents. However, we agree that the vent at the BP facility should be excluded because it never existed. Without this vent, the TRE threshold for control of continuous process vents is now 1.9 rather than 2.6.

Comment: Several commenters requested that control devices installed prior to April 4, 2002, be grandfathered from the 98 percent reduction requirement if they achieve 90 or 95 percent control of organic HAP. The commenters noted that many companies may be faced with abandoning existing control devices and installing new devices to get only an incremental reduction in HAP emissions, and they noted that other MACT rules (*e.g.*, pharmaceuticals and pesticide active ingredients) allow the continued use of existing controls that have a lower efficiency than the standard. One commenter also indicated that regenerative thermal oxidizers (RTO) have difficulty in achieving 98 percent control.

Response: Since the final rule provides less stringent control requirements for control devices that can recover materials for reuse, we assume that the bulk of the concern related to control devices is for incinerators that will not meet 98 percent. Devices such as RTO are typically installed to control high air flow, low concentration streams. Therefore, while this type of device may not meet the 98 percent control requirement, the final rule also allows sources to demonstrate compliance with an outlet concentration limit, which may be achievable by an RTO when the uncontrolled HAP concentration in the vent stream is low. We note also that the batch vent requirements contain options for monitoring parameters in lieu of correcting outlet concentration for 3 percent oxygen (O_2). Finally, the final rule includes a provision that may enable some sources to group nondedicated processing equipment together and comply only with the requirements in the rule that apply to the primary product made in the equipment.

E. Storage Tank Standards

Comment: Several commenters indicated that the proposed definition of "storage tank" is inconsistent with the ICR, MACT floor calculations for both storage tanks and process vents, EPA applicability determination documents, and other MACT rules; likely to lead to compliance confusion; and likely to force replacement of many existing floating roof tank controls at huge costs for negligible benefits. Many of the commenters recommended revising the storage tank definition to match the actual assignment of tanks in the storage tanks database and recalculating the MACT floor.

Response: The definition of "storage tank" in the proposed rule was based on the treatment of process tanks and storage tanks in the pharmaceuticals industry, a predominantly batch industry. The basis for only considering raw material feedstock tanks as true storage tanks was that the product tanks were seldom of the size at which the storage tank capacity cutoffs were set in many rules, and that a predominant number of tanks were used within processes as feed tanks from one unit operation to another. As such, emission events from these tanks usually would be calculated based on displacement resulting from filling the tank, usually on a per batch basis, and included in the operating scenario for an entire process. Emissions, therefore, were tied to the number of batches produced, as the material was transferred into and out of these tanks during each batch. We consider these tanks to be true process tanks and expect that the batch processors in the miscellaneous organic chemical manufacturing industry would agree with this treatment.

We recognize, however, that this industry contains significant numbers of continuous processors. We also recognize that this industry is more varied than the pharmaceuticals industry and that there are more tanks that are of a size and function that would be treated as storage tanks in other rules. For example, product rundown tanks and product storage tanks are not based on the number of batches, and material remains in the tank or is "stored" on a fairly continuous basis. The tanks are not filled and emptied during batch operations. These tanks are storage tanks and are recognized as such in the final rule.

We agree that the responses to the section 114 ICR would be based on the HON and NSPS definitions, and we have revised the storage tank definition to be consistent with the HON and NSPS. Although defined separately, the HON treats surge control vessels and bottoms receivers, types of tanks found in predominantly continuous processes that function in receiving material between continuous operations, exactly like storage tanks. We kept these terms and requirements in the final rule, but revised the definition of surge control vessel to be consistent with the definition of continuous process vent (*i.e.*, surge control vessels must precede continuous reactors or distillation operations). We also added a definition for "process tank" to clarify which tanks we would consider as part of the batch process vent standards. The changes do not affect MACT floors; they only change applicability under the storage tank standards or under the batch process vent standards.

F. Standards for Wastewater Systems

Comment: Numerous commenters urged elimination of the requirement to enclose sewers and tankage for conveyance to treatment of wastewater streams with primarily soluble HAP. The commenters stated that soluble HAP do not volatilize significantly from wastewater streams upstream of biological treatment, but the cost to suppress emissions would be significant. Some commenters suggested exempting from control those

wastewater streams that contain soluble HAP unless at least 5 percent of the total soluble HAP is emitted from the waste management units. Commenters were particularly concerned about this issue for the final rule because much more methanol is present in miscellaneous organic chemical manufacturing processes than in processes subject to the HON, particularly because 40 CFR part 63, subpart FFFF, applies to HAP that are used as solvents. Another commenter claimed the available data do not support a floor of HON-equivalent control for streams with HAP concentrations less than 10,000 ppmw.

Response: We considered the request for separate treatment of wastewater containing soluble HAP. We began by reviewing the miscellaneous organic chemical manufacturing wastewater database, and we determined that wastewater containing soluble HAP compounds are generally managed separately from wastewater containing partially soluble HAP compounds in this industry. This separate treatment by the industry justifies the evaluation of separate floors in accordance with the commenter's requests. For the 60 facilities in the miscellaneous organic chemical manufacturing wastewater database, there are a total of 364 records (streams), excluding streams with HAP that are not listed on Table 9 to subpart G of 40 CFR part 63 (the HON), HAP concentrations less than 1,000 ppmw, and HAP concentrations greater than or equal to 1,000,000 ppmw. Of this total, 192 of the streams contain partially soluble or a mixture of partially soluble and soluble HAP, and 172 of the streams contain only soluble HAP. Only 26 streams contain a mixture of soluble and partially soluble HAP.

When we reevaluated the floors separately, we found that for the partially soluble and mixed streams, data show that considerably more than 12 percent of the streams that meet either of the HON cutoff criteria also received treatment consistent with HON treatment requirements (*i.e.*, the best-performing miscellaneous organic chemical manufacturing sources are those that implement HON-equivalent procedures). Of the 53 streams with flowrates greater than 1 lpm and concentrations of partially soluble or mixed streams less than 10,000 ppmw, nine are managed and treated according to HON levels. Therefore, we revised the flow cutoff in the MACT floor from 10 lpm to 1 lpm for streams with concentrations greater than or equal to 1,000 ppmw and less than 10,000 ppmw; the other cutoffs of greater than or equal to 10,000 ppmw at any flowrate for partially soluble and mixed streams are unchanged. Another 42 streams had flowrates between 0.1 and 1.0, but only one was controlled. Therefore, we concluded that a sufficient number of streams below the cutoffs were not controlled to support a no emissions reduction floor determination.

We also identified a MACT floor for the 172 wastewater streams at 33 facilities that contain only soluble HAP. We ranked the 33 facilities based on the lowest concentration and flowrate of a wastewater stream that was managed and treated according to the HON requirements. The top five facilities were found to manage and treat all their soluble HAP containing wastewater consistent with the requirements in the HON. The median of the lowest concentrations in wastewater streams at these five facilities was found to be 30,000 ppmw. The lowest soluble HAP load for any stream at the five MACT facilities was 1,663 lb/yr (which we rounded to 1 tpy). Therefore, we determined that the MACT floor consists of the management and treatment requirements in the HON for wastewater streams containing at least 30,000 ppmw of soluble HAP and at least 1 tpy of soluble HAP. Wastewater streams with soluble HAP above these concentration and load cutoffs are considered Group 1 wastewater streams in the final rule. We also evaluated a beyond-the-floor alternative based on controlling streams with mixed HAP at flowrates greater than 0.5 lpm and streams that contain soluble HAP at concentrations greater than 15,000 ppmw. The total impacts of this alternative were determined to be unreasonable. Therefore, we set the standard for existing sources at the MACT floor.

For new sources, we determined the MACT floor for wastewater containing soluble HAP to be a concentration of 4,500 ppmw at the 1 tpy load. The 4,500 ppmw corresponds to the lowest concentration of a stream containing only soluble compounds that was managed and treated in accordance with the HON. The 1 tpy load cutoff was not lowered in going from the existing source standard to the new source standard because this level already represents the lowest load cutoff of any stream at the five MACT facilities and, therefore, represents the performance of the best-controlled similar source.

Comment: Two commenters indicated the proposed rule lacks criteria for evaluating affected wastewater streams from batch process units and specialty chemicals manufacture. One of the commenters suggested revising the rule so that the emission thresholds for wastewater are determined over a representative batch cycle. To accomplish this, the commenter suggested that the following definitions be added to the rule:

- "Annual average" means the average over a designated 12-month period of actual or anticipated operation of the MCPU generating wastewater, except for units that are flexible operations or part of flexible operations. For flexible operation units, "annual average" means the average for a standard batch that is representative of the designated 12-month period of actual or anticipated operation of the MCPU generating wastewater.
- "Standard batch" means a batch process operated within a range of average or typical operating conditions that are documented in an operating scenario. Emissions from a "standard batch" are based on the production activity or product that result in the highest mass of HAP in the wastewaters generated by the process equipment during the batch cycle.

The second commenter noted that the proposed rule refers to § 63.144(c) for establishing the annual average flowrate for wastewater streams (*i.e.*, total wastewater volume divided by 525,600 minutes in a year). The commenter supported this for continuous process units, but recommended that the rule use criteria from 40 CFR part 63, subpart GGG, for batch process units since the wastewater streams from batch operations may only be operational a few months per year.

Response: The format for applicability is annual average flowrate based on the potential maximum amount of operating hours per year (*i.e.*, 8,760). Although the procedure was developed for continuous processes, it can be applied to batch processes. When multiplied out, the total flow of wastewater equivalent to 1 lpm and 8,760 hr/yr equals 0.14 million gal/yr (530 m 3 /yr). We recognize that the proposed rule did not contain guidance on how to interpret annual average for batch processes although our definition of wastewater stream described a single wastewater stream as being discarded from an MCPU through a single POD. Our intent with this language was to include all wastewater streams from single processes that were discharged through a single POD as one single wastewater stream. In the HON, annual average concentration is the total mass of compounds listed in Table 9 to subpart G of 40 CFR part 63 that are in the wastewater stream during the designated 12-month period divided by the total mass of the wastewater stream during the 12-month period. There is no separate consideration in the HON for

multipurpose batch operations or POD that serve numerous processes because the equipment is part of a flexible operation.

For 40 CFR part 63, subpart FFFF, however, we based the MACT floor on data from wastewater streams that were developed based on our proposed definition of wastewater. Therefore, the definition of annual average is based on wastewater streams from a POD from a single MCPU. For flexible operations (*e.g.*, multipurpose equipment not dedicated to any single process), we have incorporated the concept of a family of materials that considers as a single product the manufacturing processes of multiple materials that are related. Additionally, we consider "nondedicated solvent recovery operations" as a single process. Therefore, in these two circumstances, the definition of wastewater stream should be based on the total mass and flow out of the POD from the sum of all operations considered within the family of materials or within the recovery process. In all other cases, the flow and concentration of HAP should be based on the total flow of wastewater and mass of HAP from all batches of a single process.

The final rule requires a manufacturer of a family of materials in flexible operation units to determine the annual average using a procedure consistent with that described by the commenter. Specifically, the worst-case product would determine the standard batch, and the total flow of wastewater would be based on the total flow of wastewater generated by all batches manufactured in any 12-month period. However, if materials manufactured in the flexible operations fell among more than one product not considered part of a family of materials, we would consider these separate processes, and the annual average concentration and flow would be limited to the characteristics of each process.

Comment: Consistent with comments on the definition of the miscellaneous organic chemical manufacturing process, one commenter suggested revising the definition of "maintenance wastewater" to clarify that wastewater from routine cleaning operations occurring within a batch process is not considered maintenance wastewater. Another commenter noted that some cleaning operations are performed for equipment preparation and to remove inorganic scale from the equipment on an occasional, though somewhat regular basis. The commenter observed that these operations are performed between batches, though not between every batch or even between batches of different grades. They are performed when maintenance is needed or plugging is evident. The commenter asked for clarification that the types of cleaning operations that do not generate maintenance wastewater are those performed between batches for the purposes of changing grades and not those done to prepare equipment for maintenance or to remove inorganic foulants.

Response: We agree with the commenters regarding the need to exclude non-routine cleaning operations from other process wastewater streams and have included them in the definition of "maintenance wastewater." This issue is analogous to the issue of including vents from routine cleaning operations as process vents and covering other types of events under the SSM provisions.

Comment: One commenter requested an exemption from the offsite certification requirement in 40 CFR 63.132(g)(2), (3) and (4) for any facility electing to discharge wastewater streams to a RCRA-permitted treatment, storage, and disposal facility (TSDF) under 40 CFR parts 264 and 265. The commenter asserted that a RCRA TSDF should be presumed to be acceptable compliance equipment for miscellaneous organic chemical manufacturing facilities, and this presumption should be explicitly stated in the final rule.

Response: We agree that RCRA TSDF satisfy the compliance requirements in the final rule. The proposed subpart FFFF explicitly stated that performance tests, design evaluations, and related monitoring, recordkeeping, and reporting would not be required when a hazardous waste incinerator is used to meet emission limits. This provision is retained in the final rule through the reference to § 63.988(b)(2), and it applies to offsite treatment facilities as well as affected sources. To simplify and clarify the requirements for offsite treatment facilities, the final rule states that the affected source may indicate in its notification of compliance status (NOCS) report that it is shipping the wastewater to an offsite treatment facility that meets the requirements of 40 CFR 63.138(h), and that the wastewater will be treated as hazardous waste; this documentation may serve as the certification from the offsite treatment facility.

G. Standards for Equipment Leaks

Comment: Three commenters stated that the docket does not support our conclusion that the HON LDAR program is the MACT floor. Two of the commenters also opposed our approach of assigning a single LDAR program to each facility. They noted that facilities do not always use the same LDAR program for all of their processes. According to one commenter, there also are numerous errors and inconsistencies between various background memoranda, the section 114 ICR responses, and the equipment leaks database that EPA distributed to industry, with no documentation in the docket to explain the differences. After obtaining new information from some of the facilities in the database, the commenter saw no support for a determination that HON-equivalent controls establish the MACT floor (*i.e.*, of the estimated 1,220 processes, only 34, or 2.8 percent, appear to have HON-equivalent programs). The other two commenters indicated that the floor (and standard) should be based on either the LDAR program in the SOCMI NSPS (40 CFR part 60, subpart VV) or subpart TT of 40 CFR part 63 (the Generic MACT).

Response: After considering the comments and reviewing the available data, we decided to determine the MACT floor on a process basis because some facilities do not implement the same LDAR program for all of their miscellaneous organic chemical manufacturing processes. Therefore, we decided to reevaluate the MACT floor on a process basis. Before revising the analysis, we also reviewed the specific data entries that were disputed by the commenters.

Regrettably, the database that was made available to the industry was not consistent with the final database that we used to develop the MACT floor prior to proposal. As a result, many of the discrepancies identified by commenters are addressed simply by using the correct database.

We also reviewed other changes that the commenter recommended and made corrections to the database under the following two circumstances: when a process is subject to the HON so that only the batch process vent emissions are subject to subpart FFFF, and when a facility representative informed the commenter that a non-HON LDAR program or no program is implemented for a miscellaneous organic chemical manufacturing process. After making the revisions, we found 51 of 1,139 processes are controlled to the HON LDAR (*i.e.*, the best-performing LDAR program in use at miscellaneous organic chemical manufacturing sources), or 4.5 percent controlled. Based on this result, we could not justify a MACT floor at the HON level of control.

Therefore, we reexamined the processes subject to other LDAR programs to develop a revised MACT

floor. A few processes are subject to LDAR programs required by the State of Louisiana, but most other processes subject to LDAR programs are implementing various programs required by the State of Texas or the program in 40 CFR part 60, subpart VV. For this analysis, we considered the Texas programs and the subpart VV program to be essentially equivalent because they all require only sensory monitoring for connectors. These programs also are equivalent to the program in 40 CFR part 63, subpart TT. Only LDAR programs designated as audible/visual/olfactory (*e.g.*, not Method 21 monitoring) were not considered at least equivalent to subpart TT. We found that 236 of the 1,139 processes, or 21 percent, were controlled at least to the subpart TT level. Therefore, we set the floor based on the requirements of 40 CFR part 63, subpart TT.

Based on the revised MACT floor, we conducted an analysis of the cost of going above the floor to the 40 CFR part 63, subpart UU, program. In conducting this analysis, we revised our estimated uncontrolled emissions for our model processes by using the initial leak rates submitted by the industry in their comments. At the leak definitions of 500 ppmv for connectors and valves and 1,000 ppmv for pumps, we calculated leak rates of 0.35 percent for connectors, 6.47 percent for pumps, and 1.66 percent for valves from the data submitted by the industry. We also compared these leak rates and their resulting emission rates to data collected in the development of the Polymers and Resins IV NESHAP and found good agreement. The polymers and resins industry leak rates were 0.61 percent for connectors, 8.71 percent for pumps, and 1.4 to 1.8 percent for valves. To estimate reductions achieved by the LDAR programs, we assumed that the reduction achieved by the subpart UU program would be equal to the emissions estimated at the performance level of the program. We assumed that the subpart TT program would be half as effective as subpart UU for pumps, valves, and connectors, and that the reductions for pressure relief valves, open-ended lines, and sampling connections would be the same under both programs.

We also revised elements in our cost analysis to address commenter concerns. The revised analysis assumes that a facility required to implement an LDAR program will hire a subcontractor based on our understanding that this is the preferred and common alternative over the implementation of an in-house program. The analysis also made use of revised cost data from the project files of the Polymers and Resins IV NESHAP.

The revised cost analysis shows that for processes with continuous process vents, the cost of the subpart TT program (the MACT floor) is $3,200/Mg, the cost of the subpart UU program is $2,800/Mg, and the incremental cost to go beyond the MACT floor to the subpart UU program is $470/Mg. These costs are considered reasonable. Conversely, for batch processes, the costs of the beyond-the-floor option were determined to be unreasonable. Therefore, we decided to set the standard at the MACT floor for processes with only batch process vents, and we selected the beyond-the-floor option of subpart UU for processes with at least one continuous process vent.

Comment: Several commenters generally supported the pressure testing option in § 63.1036(b) of subpart UU, which requires that new or disturbed equipment be tested for leaks before use. However, the commenters are concerned that § 63.1036(b)(1)(iii) could be interpreted as requiring facilities to conduct leak tests whenever flexible hose connections are changed as part of a reconfiguration to make a different product or intermediate. The commenters stated that these leak tests would be burdensome because (1) changing flexible hoses to make different products may occur as frequently as daily or weekly, which would substantially increase the cost of conducting LDAR programs and take away from operating time, resulting in lost production and sales; (2) more frequent leak tests would also result in more emissions because the equipment must be purged to conduct the tests; and (3) flexible hoses that have been water tested would often have to be flushed with solvent prior to startup, which would add more turn-around time and increase waste generation. According to one commenter, connecting flexible hoses in different configurations is the type of "routine" seal breaks that were not intended to trigger LDAR pressure testing requirements. Thus, the commenters recommended revising § 63.1036(b)(1)(iii) to exempt all routine seal breaks of flexible hoses from LDAR requirements. One commenter also recommended that pressure testing be allowed as an option for sources that comply with the requirements in 40 CFR part 63, subpart TT.

Response: We agree with the commenters that pressure testing each time process equipment is reconfigured only by changing flexible hose connections at a transfer station is excessively burdensome and likely to lead to more emissions than it prevents. Therefore, the pressure test option in the final rule allows this type of routine disturbance without the requirement to conduct a new pressure test. Since the final rule allows compliance with the requirements of 40 CFR part 63, subpart UU, as an alternative to the requirements of 40 CFR part 63, subpart TT, an owner or operator may comply with the pressure testing option in subpart UU as an alternative to the requirements of subpart TT.

H. Standards for Transfer Racks

Comment: One commenter indicated the MACT floor for transfer racks was established incorrectly and stated that we have no section 114 ICR data to support the transfer racks MACT floor because this information was not requested for the miscellaneous organic chemical manufacturing source category. The commenter indicated that using transfer rack data from HON sources or Organic Liquid Distribution (OLD) NESHAP sources is not appropriate for the miscellaneous organic chemical manufacturing source category, even if it does streamline the compliance process. The commenter noted that the Group 1 requirements of subpart G of the HON apply to a different source category manufacturing different chemicals in continuous, generally high-volume processes. The commenter claimed we made a "leap of faith" in assuming that the emission and control data for one source category are appropriate to another totally distinct category. The commenter could find no documentation indicating that subpart G continuous process load rates and vapor pressure cutoffs are applicable to batch subpart FFFF facilities. The commenter argued that setting a MACT floor using "existing available data" from a different source category is inconsistent with CAA requirements and requested that an actual transfer rack MACT floor determination be made prior to establishing the subpart FFFF control requirements.

Response: The MACT floor was based on the HON requirements. We did not have any specific data from our source category, but we relied on information that many of the facilities in this source category are co-located with facilities subject to the HON. The commenter objected to our assumptions because the HON applies to continuous, high volume production processes. Although subpart FFFF applies to many processes, batch specialty chemicals are a major component of the source category, and we agree that individual products are typically manufactured in lesser volumes than typical products in the HON source category. However, we

note that transfer operations, which by definition consist of the loading racks for tank trucks and rail cars, are more specific to the size and type of vessel being loaded than the process that generates the products.

These tank trucks and rail cars are standard in size and configuration so that the same tank trucks and rail cars would be expected to carry material from either source category. Further, pumps, loading arms, and vapor collection and control equipment are not as much dependent on the process that generates the materials as the products themselves which are composed of either pure HAP or solutions containing significant amounts of HAP.

Our data indicate that 60 percent of the facilities that contain miscellaneous organic chemical manufacturing processes also contain processes subject to the HON. Additionally, we would expect that transfer racks located at these facilities would be used to load materials from both HON and miscellaneous organic chemical manufacturing processes. Therefore, we consider it reasonable to assume a MACT floor based on the requirements of the HON.

The HON standards were established based on the lowest yearly loading rates that are controlled in the source category. Because the HON source category manufactures at typically higher volume production than what would typically be expected in the miscellaneous organic chemical manufacturing source category, and control requirements are based on the rack weighted average partial pressure of HAP, it offers a conservative approach to the MACT floor when applied to the batch specialty chemical industry. Therefore, only transfer racks that load miscellaneous organic chemical manufacturing products containing significant amounts of HAP are affected by the control requirements.

I. Pollution Prevention

Comment: Three commenters stated that the pollution prevention (P2) option should be broadened to allow more nondedicated batch operations or groups of nondedicated batch operations to use P2 for compliance. The commenters maintained that calculating and tracking HAP factors for individual nondedicated processes would not be viable for small operations. One commenter was concerned that only dedicated solvent recovery operations may be included in a P2 demonstration; nondedicated solvent recovery operations may not be considered in conjunction with the processes for which they recover solvents for the P2 alternative standard. Similarly, another commenter stated that the proposal is not viable because waste solvents from numerous nondedicated batch processes are collected and refined at a central recovery unit, and § 63.2495(b)(2) of the proposed rule would preclude the merging of nondedicated solvent recovery with other processes. The commenter suggested including all of the operations in the calculation of a HAP consumption factor (including nondedicated recovery operations that receive and recover solvents for the operations). In addition, the commenter suggested that the production rate should exclude isolated intermediates to appropriately reflect the benefits achieved when measures are taken to eliminate isolation of intermediates. Because the boundaries are well defined, the commenter indicated that such an approach would be clearer to implement and enforce. To incorporate this approach, the commenter suggested adding a statement to the rule that says you may comply with the P2 option for multiple processes and associated recovery operations if the Administrator approves your P2 methodology submitted in the precompliance report.

Response: After examining the approach suggested by the commenters, we have concerns that it would not be consistent with the goals of P2 and also would not preserve the reductions in HAP consumption that would occur if the P2 alternative were limited to each product. The commenters suggested facilitywide groupings to demonstrate overall reductions in the HAP consumption factors. One of our major concerns stems from the fact that specialty chemical facilities will not manufacture the same products from the baseline years to the contemporaneous period. Under their suggested grouping concept, however, a baseline factor could be developed from a different set of products than those in the contemporaneous period. In this situation, a facility could demonstrate a reduction in the HAP factor by simply not manufacturing products that have high HAP consumption. Although these efforts could result in a net benefit to the environment, they are not considered P2 strategies and, therefore, an owner or operator should not take credit for these changes. Secondly, using the same groupings concept, a manufacturer could effectively reduce the overall usage of HAP in a production process in any given year, but increase the HAP factor for that product and still meet the grouping target reductions, but not the target reductions on individual product lines. This would effectively allow an owner or operator to comply with a P2 alternative that could increase the inefficiency and waste within a process. Therefore, combining processes or groups of processes as suggested by the commenters is not appropriate, and we have not revised the alternative per the commenter's requests.

We also clarified language regarding merging processing steps conducted offsite to onsite for the purposes of redrawing a process boundary and claiming a reduction in consumption. For example, a solvent recovery step conducted offsite or as part of another process cannot later be moved onsite or to another process and used to claim a reduction in consumption. Such a strategy does not result in true emission reductions, but rather is a result of moving process boundaries.

Comment: Several commenters were concerned that the proposed P2 option would not allow for the generation of HAP other than HAP being used in the process. They noted that based on the definition of "consumption" and § 63.2495(b) of the proposed rule, if the HAP used by the process are not the same as those generated in the process, then the generated HAP must meet the otherwise applicable standards. One commenter suggested revising the definition of consumption to include HAP generated in the process, and the other commenters suggested incorporating generated HAP into the calculation of the HAP factor or the target HAP reduction.

Response: We do not agree with the suggested changes. The P2 alternative specifies that HAP generated in the process that are not introduced into the process and part of the consumption factor must be controlled per the standard requirements. This restriction is needed to ensure that reductions anticipated from the implementation of the alternative will occur. Consider a situation where the incoming quantity of HAP is considerably less than the amount of HAP generated in the process. Further, suppose the entire quantity of HAP generated in the process is emitted through a process vent (*i.e.*, no waste or wastewater). If the P2 alternative were to allow the quantity of HAP generated to be considered as part of the consumption factor, then the P2 standard could be met by capturing and recovering only 65 percent of the HAP emitted, which may not preserve the reductions we anticipated from the implementation of the standards as written. Therefore, we have not

modified the alternative according to the commenters' requests.

J. Initial Compliance

Comment: Several commenters indicated that the proposed requirements to complete initial compliance demonstrations and submit the NOCS report by the compliance date are unworkable and unreasonably and unfairly shorten the 3-year compliance period. Based on the commenters' experience, the entire 3-year period is needed to permit, plan, design, procure, install, and shakedown the equipment necessary for MACT compliance. In addition, the 150-day period after the compliance date that other rules allow before the NOCS report is due allows facilities to properly test their control systems, perform necessary shakedown operations, and set the parametric operating limits using actual data. The commenters requested that the final rule defer to the General Provisions regarding the timeline for initial compliance demonstrations and allow the NOCS report to be submitted no later than 150 days after the compliance date. Another commenter requested that area sources that become major sources be allowed up to 3 years to comply with the final rule because the level of effort would be the same as for any existing source when the rule is promulgated.

Response: We accept the argument that some facilities with numerous processes and controls may need the full 3 years from the promulgation date to the compliance date to bring all of the equipment on-line before completing the initial compliance demonstration. Therefore, we decided to change the due date for the NOCS report. In the final rule, the NOCS report for all sources, including area sources that become major sources, is due no later than 150 days after the compliance date. In addition, the final rule specifies that the compliance date for area sources that become major sources is 3 years after the area source becomes a major source.

Comment: Several commenters indicated that references to § 63.1257(d)(2)(ii) of the pharmaceutical MACT in the proposed rule inappropriately restrict the use of engineering assessments. The commenters indicated that the rule should not require sources to demonstrate that the calculation methods specified in the rule are not appropriate in order to be allowed to calculate uncontrolled HAP emissions using an engineering assessment. The commenters also objected to language in § 63.1257(d)(2)(ii) that restricts the use of modified equations to those that the source can demonstrate have been used to meet other regulatory obligations. The commenters indicated that they should only be required to show that the selected method for determining uncontrolled HAP emissions is appropriate, and that it has no impact on the applicability assessment or compliance determination.

Response: We did not revise the restrictions on the use of the modified equations as requested because the suggested changes would not maintain our objective of having a replicable compliance protocol that is applied consistently across the source category. Therefore, the final rule, like the proposed rule, restricts the use of engineering assessments to situations where the equations are not appropriate.

Comment: Several commenters requested that the procedures for calculating uncontrolled HAP emissions be modified in the final rule so that it represents "post condenser" emissions if the condenser is recovering HAP for reflux, reuse, or use as a fuel. The commenters stated that, for many types of emission events, the proposed equations would require the use of the vessel temperature rather than the temperature of the receiver that receives condensed liquid. The commenters indicated that the procedures ignore the emission reduction realized by the condenser, inflates the uncontrolled emissions, and is inconsistent with the MACT floor database.

Response: We disagree with the suggested change. Our position is that uncontrolled emissions should be determined at the point the vent stream leaves the process and prior to entering any control device. A condenser that meets the definition of "process condenser" is considered integral to the process, and uncontrolled emissions are calculated at the outlet of the condenser. Process condensers must initiate vapor-to-liquid phase change in an emission stream from equipment that operates above the boiling or bubble point, including condensers located prior to a vacuum source. All other condensers serve primarily to reduce or remove air pollutants, with or without some product recovery benefits; therefore, uncontrolled emissions should be calculated prior to the condenser. This approach does not inflate uncontrolled emissions; it characterizes them properly. Furthermore, if a condenser is determined to be an air pollution control device, the removal efficiency is included as part of the overall control efficiency for the process; it does not ignore the emission reduction realized by the condenser. Finally, we consider the approach to be consistent with our database because we provided clear instructions with the ICR regarding how to report emissions from condensers, and we trust that most respondents followed those instructions.

Comment: Two commenters objected to the proposed requirements for testing control devices that treat emissions from batch process vents under absolute or hypothetical worst-case conditions, as described in the Pharmaceutical Production MACT (§ 63.1257(b)(8)). One of the commenters was concerned that facilities would be forced to generate unwanted or off-specification material in order to satisfy the requirements for worst-case conditions. This commenter requested that the final rule either defer to the General Provisions at § 63.7(e)(1), which require testing under normal operating conditions, or replace paragraph § 63.2470(c) in its entirety with a reference to the performance test requirements of 40 CFR part 63, subpart SS. The second commenter stated that the worst-case testing provisions are technically infeasible and unjustified based on existing EPA regulations. That commenter noted that the Polymers and Resins IV NESHAP recognized this issue and require sources to test under worst-case actual production conditions as opposed to hypothetical worst-case conditions (*i.e.*, § 63.1325(c) of subpart JJJ).

One commenter also suggested that worst-case conditions may not always occur at the highest pollutant loading. According to the commenter, the control efficiency of thermal oxidizers generally increases as the loading increases, and the more challenging compliance demonstration would, therefore, occur under actual/normal operating conditions when the pollutant loading is changing several times over the course of a batch cycle. The commenter requested that the final rule allow facilities the option of using either the Polymers and Resins IV NESHAP testing protocols or the Pharmaceutical NESHAP testing protocols as a site-specific election in the pre-test protocols that facilities must submit prior to testing.

Response: We disagree with the commenters' suggestion that sources be allowed to conduct performance tests under "normal operating conditions." Specifically, we disagree with a commenter's contention that operators would be forced to generate unwanted or off-specification material in order to satisfy the requirements of worst-case conditions. The final rule, like the proposed rule, allows the source to test under "hypothetical worst-case conditions" as an alternative to testing under absolute worst-case conditions. Hypothetical worst-case conditions are

simulated test conditions that, at a minimum, contain the highest HAP load of emissions that would be predicted to be vented to the control device based on an emission profile developed by the owner or operator. For example, an owner or operator could arrange to boil off a more volatile compound than those actually used in processes in separate equipment that can be connected to the ductwork upstream of the control device (if the emissions profile shows that this would represent worst-case conditions for the control device) and then test the control device. In this example, the owner or operator would not have to manufacture any unplanned products or generate products that do not meet normal specifications.

Also, when sources test under worst-case conditions, this should eliminate (or at least reduce) the need for any retesting at a later date when conditions change. If a source tested under "normal operating conditions," then any change from these conditions could/should trigger a need to retest the source under the "revised" normal operating conditions. The concept of worst-case conditions allows sources to anticipate potential changes so that only one (initial) test is generally required.

We agree with the commenter's assertion that worst-case conditions for thermal oxidizers may not occur at the highest pollutant loading. One extreme is when inlet concentrations are low (less than 1,000 ppmv). For these inlet conditions, the final rule allows compliance with a 20 ppmv outlet concentration limit instead of requiring 98 percent reduction. For streams with higher concentrations, higher loads are likely associated with higher flowrates. As the flowrate increases, residence time in the combustion chamber decreases, which could reduce performance. Therefore, we require the test at highest load.

Comment: One commenter stated that facilities should be able to use the results of compliance testing in one reactor configuration done under another MACT standard for an identical configuration regulated under 40 CFR part 63, subpart FFFF, even if the HAP vent to two separate, yet identical control devices.

Response: The final rule does not allow sources to "borrow" test results from one control device and apply those results to another "identical" control device. Factors other than the design of a control device can affect its performance and, therefore, each control device must be tested separately.

Comment: One commenter requested that we allow facilities the option of using EPA Method 320 for any initial compliance option for batch or continuous streams and allow the use of EPA Method 320 for continuous emission monitoring systems (CEMS) that monitor HF, other fluorochemicals, and halogenated compounds in addition to those that monitor HCl.

Response: We agree with the commenter that EPA Method 320, Fourier Transform Infrared (FTIR), is an acceptable method to demonstrate compliance for any type of batch or continuous vent stream. Therefore, the final rule includes EPA Method 320 as an option for measuring any of the listed HAP in a vent stream. We note, however, that unless Method 320 has been validated at a "similar source," the tester must validate Method 320 for that application by following the procedures in Section 13 of Method 320. To clarify the requirements for CEMS, § 63.2450(g)(1)(i) of the final rule specifies that a monitoring plan is required for CEMS other than an FTIR meeting Performance Specification (PS) 15 to measure hydrogen halide and halogen HAP, rather than only HCl.

Comment: Three commenters requested changes and clarification of the requirements for establishing operating limits. One commenter requested that the requirements be consistent with those in § 63.1334(b)(3) of 40 CFR part 63, subpart JJJ. A second commenter interpreted the proposed language to mean that an average is calculated from the values of the three test runs and then an engineering analysis may be applied to establish an operating limit that accounts for expected process variation. That commenter also requested a description of the process to be used and the timeframe under which the Administrator will conduct the review and approval of operating limits established in accordance with § 63.2470(e)(3)(i) of the proposed rule.

A third commenter took issue with the requirement that the operating parameter(s) be set at the average value measured during the performance test. The commenter noted that other chemical industry regulations allow the measured value to be adjusted based on engineering assessment and claimed that this is critical because performance tests must be run at representative conditions because of process variability, production schedules, and ambient conditions, e.g., a condenser may be tested on a cool day but the outlet temperature for compliance must reflect the hottest day as well.

Response: The final rule references the procedures in 40 CFR part 63, subpart SS, for establishing operating limits, except that for control devices used for batch process vents, § 63.2460(c)(3) specifies additional procedures for setting the limits. Although the provisions differ slightly from what is described by the third commenter in that the performance test must be conducted at worst-case conditions, owners or operators can utilize engineering assessments to develop either a single limit for the entire process or multiple levels for different emission episodes within the process. These requirements ensure that the performance test captures challenging conditions that are not always present because of the variable nature of batch vents. If no Group 1 batch process vents are vented to the control device, then operating limits may be set using the results of the performance test and engineering assessment procedures as specified in subpart SS and consistent with the procedures described by the commenter. For batch process vents, we consider it appropriate that the initial compliance procedures in 40 CFR part 63, subpart FFFF, be consistent with the procedures in 40 CFR part 63, subpart GGG.

The final rule explicitly states in § 63.2460(c)(3) that operating limits based on the results of performance tests supplemented by other information must be reported in the source's precompliance report and approved by the Administrator. However, operating limits based on the average of the three test runs do not require preapproval. The final rule, like the proposed rule, also requires the owner or operator to submit in the precompliance report the test conditions, data, calculations, and other information used to establish operating limits in accordance with § 63.2460(c)(3). The precompliance report will be approved or disapproved within 90 days after receipt by EPA.

Comment: Several commenters indicated that the proposed rule did not address situations where a process has both batch and continuous unit operations or cases where batch vents and continuous vents are combined into a common header system. Another commenter suggested that batch vents manifolded together with continuous process vents should be treated as continuous process vents. Two of the commenters suggested that we resolve the issue of combined vent streams by deferring to 40 CFR part 63, subpart SS, for regulation of process vents. One commenter noted that subpart SS contains language at § 63.982(f) that governs how compliance with manifolded vents is determined and requested that this concept also be extended to allow for control devices that control vents subject to more than

one MACT standard, where completion of a successful compliance determination for one standard meets the compliance determination requirements of the other MACT standards where the control device controls similar HAP. Other commenters suggested that we allow compliance demonstrations for combined streams similar to the provisions under the Generic MACT for the Polycarbonate Production source category (40 CFR part 63, subpart YY), and add a definition of "combined vent stream" based on the definition in 40 CFR 63.1101 (subpart YY).

Response: The final rule clarifies requirements for combined streams in a manner similar to that described in § 63.982(f), but extends these requirements to deal with batch process vents and wastewater vent streams. For a combined stream, if any of the continuous process vent streams within the aggregated stream would be Group 1 by themselves and the batch streams are not Group 1, then the provisions of subpart SS may be followed in demonstrating 98 percent control of the combined aggregate stream. If a combined stream contains Group 1 batch process vents, then the initial compliance provisions for batch process vents must be followed in demonstrating 98 percent control of the combined aggregate stream. Also, the final rule does not allow an option to raise the TRE above 1.0 using a recovery device.

Subpart SS requires that the performance test be conducted at maximum representative operating conditions and only over the batch emission episodes that result in the highest organic HAP emission rate that is achievable during the 6-month period that begins 3 months before and ends 3 months after the compliance assessment. In contrast, the initial compliance provisions for batch process vents provided in the proposed rule would require that the test be conducted at worst-case conditions. For industries where products and operations remain fairly constant, there should be no significant difference between the "worst-case conditions" described by the batch process vent initial compliance provisions and the "maximum representative" conditions required by subpart SS. However, for control devices that might see a wide variability of products and emission stream characteristics, such as those in the miscellaneous organic chemical manufacturing industry, the test required by subpart SS may not be representative at a later date when products have changed. Therefore, compliance with the batch testing provisions is a more comprehensive requirement, and we are inclined to retain it under most circumstances. However, in cases where the combined stream includes Group 2 batch process vents and no Group 1 batch process vents, we agree that owners and operators should be allowed to follow the compliance demonstration requirements of subpart SS.

A second issue occurs when combining streams changes the characteristics of the aggregate stream such that less emission reduction may occur. Because control requirements are 98 percent under both the batch provisions and continuous (subpart SS) provisions, this is not an issue for streams routed to control devices. However, for recovery devices, there are differences between meeting 95 percent recovery under the batch process vent provisions and meeting a TRE index under subpart SS. For example, the overall required emission reductions could be lessened by combining a number of low-concentration batch streams, that would not trigger control under the batch requirements, with a rich continuous stream that would require significant control or recovery of material by itself, which would raise the outlet TRE value at the outlet of the recovery device and allow use of an ineffective recovery device and no further control. Similarly, emission reductions could be lessened by aggregating rich batch vents (with uncontrolled emissions of greater than 10,000 lb/yr) with continuous vents and allowing less than 95 percent control by meeting the TRE. In either case, the use of a recovery device to raise the TRE index above 1.0 could result in actual emissions above the level required had the streams not been aggregated and, therefore, we are not allowing this option. Thus, all Group 1/Group 2 determinations for vent streams must be made prior to aggregation and prior to any recovery device.

K. Ongoing Compliance

Comment: One commenter requested that the monitoring provisions be modeled after 40 CFR part 63, subpart SS, for continuous vents, and that we establish a similar cost-effective level for batch process vents. Another commenter stated that the requirements for continuous parameter monitoring systems (CPMS) are more fully and correctly covered in subpart SS and that the periodic verification requirements of § 63.2470(f) are duplicative of title V, wasteful, and unnecessary.

Response: We decided to streamline the compliance procedures and promote consistency among rules by referencing subpart SS in its entirety for most of the monitoring requirements. For batch process vents, however, we retained some additional monitoring provisions from the proposed rule that are based on requirements in subpart GGG (the Pharmaceuticals Production NESHAP). One of these provisions allows the owner or operator to set monitoring parameter values (*i.e.*, operating limits) at levels other than what were obtained from the performance test.

A second provision consistent with subpart GGG is the "periodic verification" procedure for control devices with inlet HAP emissions less than 1 tpy (§ 63.2460(c)(5) in the final rule). We do not agree with the suggestion that title V periodic monitoring requirements are duplicative for control devices with less than 1 tpy HAP load. The title V periodic monitoring requirements in 40 CFR 70.6(a)(3)(i)(B) apply only where an underlying applicable requirement such as NESHAP require no monitoring of a periodic nature. Thus, the title V periodic monitoring requirements will not apply where the monitoring requirements of subpart FFFF do apply.

A third provision based on subpart GGG is the option to establish averaging periods over either an operating block or an operating day. This provision may be useful if each batch is not always completed within an operating day or when an owner or operator elects to set multiple operating limits for different emission episodes.

Comment: One commenter stated that the proposed monitoring and reporting requirements do not meet the enhanced monitoring requirements as set forth in section 114(a)(3) of the CAA and, therefore, are "arbitrary and capricious." The commenter indicated that some sources are exempted from "any truly effective monitoring strategy" and that "sources with greatest HAP emissions, which fall outside the MACT floor due to size, have loosest monitoring requirements."

Response: We disagree with the commenter's assertions. The final rule, like the proposed rule, requires monitoring of all control devices. To minimize the burden on small operations (*e.g.*, small control devices controlling batch process vents), the monitoring requirements differ for lower-emitting sources; however, these sources are not "sources with the greatest HAP emissions." In addition, § 63.2525(e) of the final rule requires recordkeeping of emission points that fall outside of the MACT threshold for control to be sure that these points remain below the threshold.

Comment: Two commenters took issue with the monitoring requirements for catalytic oxidizers. The first commenter claimed that testing of the catalyst activity is unnecessary (as long as the temperature differential is maintained, the catalyst is effective); is inconsistent with the requirements under other rules that frequently share the device; and would force annual outages of the control device for sampling with significant negative environmental impacts and costs. The commenter recommended that the monitoring requirements for catalytic oxidizers be based on the 40 CFR part 63, subpart SS, requirements, which are based on the HON requirements. The other commenter suggested that vendor guarantees/warranties for catalytic incinerators be allowed as an alternative to the annual catalyst test or quarterly temperature differential check. This commenter noted that some catalyst vendors will supply a warranty if certain work practices are fcllowed, such as raising the inlet temperature according to a set schedule. This commenter's experience indicated that temperature differential set at maximum load across the bed is not a particularly good indicator of catalyst activity for a variable process vent stream.

A third commenter expressed support for the monitoring requirements for catalytic oxidizers in the proposed rule, but requested that we make it clear that the catalyst activity test is not the only compliance alternative allowed and define what an annual catalyst test entails. The commenter further stated that, if a performance test must be done annually, EPA should consider if the cost of a performance test (*e.g,* $15,000) can be justified annually. If verifying the catalyst activity does not require a performance test, then the commenter stated EPA should establish guidelines on how to conduct the annual test.

Response: We agree that maintaining a temperature differential across the bed is evidence that the catalyst is effective, and it is a valid means of demonstrating ongoing compliance. It also is the requirement specified in subpart SS and many other rules and by referencing subpart SS, it is included in the final rule. However, we also included the catalyst test option from the proposed rule because, as one commenter points out, it is difficult to maintain the required differential across the catalyst bed when the organic load into the catalytic incinerator fluctuates, even though it may actually still be achieving the same reduction efficiency. This could be a particular concern when the initial performance test must be conducted under worst-case conditions, which generally is the maximum load. This option requires catalyst bed inlet temperature monitoring and an annual catalyst activity level check. When monitoring only the inlet temperature, the catalyst activity level check also is needed; unlike thermal oxidizers, catalytic oxidizer performance cannot be ensured simply by monitoring the operating temperature. Catalyst beds can become poisoned and rendered ineffective without any apparent change in operation. An activity level check can consist of passing an organic compound of known concentration through a sample of the catalyst, measuring the percentage reduction of the compound across the catalyst sample, and comparing that percentage reduction to the percentage reduction for a fresh sample of the same type of catalyst. Based on information from a company that offers such services, the cost is less than $800.

We do not agree that vendor guarantees based on following specific work practices are an acceptable alternative for monitoring the performance of catalytic oxidizers. Our experience is that the performance of air pollution control devices can degrade over time if they are not properly maintained, and that most owners and operators try to follow the vendor's recommended work practices as a preventative measure. In some cases, the vendor guarantees are only valid during the first year of operation of the control device. More importantly, basing compliance solely on vendor guarantees (that are tied to work practices) would mean that an "unexpected" deterioration in the performance of the catalytic oxidizer would go undetected and unreported because no direct monitoring of the catalytic oxidizer would be performed. Therefore, the final rule does not include the suggested alternative.

Comment: Three commenters stated that the requirement for continuous pH monitoring for caustic scrubbers is unwarranted and often impractical. For batch operations, these commenters stated that it should only be necessary to verify that the scrubber is operating properly just before and just after each batch. The commenters also asserted that continuous pH meters are often unreliable in harsh service conditions and are subject to plugging, corrosion, or contamination.

Two commenters stated that measurement of pH is not appropriate for caustic scrubbers because most, if not all, have a pH near 14, which makes the measurement irrelevant. According to the commenters, the titration curve is typically so steep that the pH measurement is not useful in controlling the scrubber. These commenters requested that the final rule be written to allow the measurement of caustic strength without the need to request EPA approval; otherwise, numerous facilities will need to request approval to measure caustic strength daily in lieu of daily pH monitoring, which would appear to place an undue burden on facilities and the regulatory organizations that must review the site-specific plans.

Response: As previously noted, the final rule references the monitoring requirements in subpart SS. For all halogen scrubbers (including caustic scrubbers), § 63.994 requires continuous pH monitoring. We have decided to retain the requirement for continuous monitoring in the final rule. This approach maintains consistency with other rules that reference subpart SS. It also addresses the commenters' concern that the steep titration curve makes pH a poor parameter for daily monitoring when pH is normally about 14 (*i.e.*, for systems where the recirculating scrubber solution is replaced on a batch basis rather than continuously adjusted to maintain relatively constant conditions). Finally, we have decided to allow continuous measurement of caustic strength at the scrubber outlet as an alternative to the continuous monitoring of pH because caustic strength is directly related to pH.

Comment: Many commenters objected to the requirement to calculate a daily 365-day rolling summation of emissions to demonstrate compliance with the 10,000 lb/yr limit for batch process vents. According to these commenters, sources should be allowed to calculate a 12-month rolling summation instead of the daily summation because daily calculations would be burdensome, particularly for facilities manufacturing many products or products with emissions well below the limit. One of the commenters also suggested replacing the 365-day rolling summation calculation with methodology, like in 40 CFR part 63, subpart JJJ, whereby the highest-emitting batch recipe for any given product is determined and the number of batches are recorded to demonstrate that a process has less than 10,000 lb/yr uncontrolled emissions. Two commenters also are uncertain how to calculate daily emissions from batch processes that are carried out over several days. Another commenter indicated that the existing monitoring and recordkeeping requirements in title V and/or state minor new source review permits are sufficient to demonstrate compliance with the limit.

Response: In order to demonstrate continuously that uncontrolled organic HAP emissions from a process have not exceeded 10,000 lb/yr, the proposed rule would require daily calculations of the emissions in the preceding 365 days. It appears that the commenters interpreted this requirement to be much more involved than we intended. We expected that, as part of the initial compliance demonstration, an owner or operator would determine the uncontrolled batch process vent emissions for a standard batch and divide this value into 10,000 to determine the number of batches that could be run in a 365-day period. One way to demonstrate continuous compliance would be to track the number of batches produced each day and show that the running total number of batches for the preceding 365 days does not exceed the number calculated during the initial compliance demonstration. The only potentially complicating twist to this process is that the total has to be adjusted to account for any difference in emissions when a nonstandard batch is operated, but we expect such events to be uncommon.

The final rule retains essentially the same requirement as the proposed rule because daily summations are needed to demonstrate continuous compliance, and we do not consider the demonstration to be unduly burdensome. However, upon consideration of the comments, we have decided to make three changes in § 63.2525(e) in the final rule to clarify our intent and perhaps reduce the burden. First, to address the situation of a batch that is run during more than a single calendar day, we specify that the record that the batch was run should be assigned to the day the batch is completed. Second, we agree that physically calculating the summations does not need to be performed each day, provided the necessary data are collected in an appropriate fashion so that each of the daily calculations can be performed at a later date. The final rule allows the calculations to be performed monthly. Note that each day that exceeds the limit is still a separate deviation. Finally, we edited the language to clarify that alternative records that correlate to the total emissions, such as the number of batches, may be maintained.

Comment: Several commenters expressed concerns with the proposed quality assurance/quality control (QA/QC) requirements for continuous parameter monitoring and requested that they be removed from the rule. One commenter indicated that the proposed QA/QC requirements are being introduced in a piecemeal fashion while they are still evolving, are technically unworkable, impose substantial burdens for no apparent benefit, significantly reduce monitor availability, may have unfavorable environmental impacts, and may create safety concerns. In addition, the commenter indicated that the proposed design and data availability requirements overlap with or conflict with existing language in subpart SS. The commenter noted that we decided not to promulgate similar QA/QC requirements in subpart SS. The commenter indicated that the justification for not adopting the requirements in subpart SS is correct and should be applied for subpart FFFF as well. Other commenters also noted that EPA's Emissions Measurement Center staff and industry are working to develop QA/QC procedures for parametric monitoring, and they recommended relying on requirements in existing rules until those efforts are finalized. One commenter considered the proposed QA/QC requirements for pH probes and flow meters to be particularly impractical and burdensome.

Response: As mentioned previously, the monitoring requirements in the final rule are based largely on subpart SS and, thus, the sections of the proposed rule referenced by the commenters (*i.e.*, § 63.2475(c) through (f)) no longer apply. We have deleted these QA/QC requirements for the same reasons we decided not to implement similar proposed QA/QC requirements in subpart SS (67 FR 46260, July 12, 2002). Specifically, we are currently developing performance specifications for CPMS to be followed by owners and operators of all sources subject to standards under 40 CF® part 63, which includes subpart FFFF. Also, subpart SS currently specifies requirements for CPMS, and the requirements of subpart SS are referenced by 40 CFR part 63, subpart FFFF. Even though they may not be as specific as those proposed, we decided it would be premature to promulgate performance specifications for subpart FFFF when the performance specifications that would ultimately be promulgated for all 40 CFR part 63 may be significantly different.

Comment: Several commenters objected to the proposed requirement in § 63.2475(g) to install, calibrate, and operate a flow indicator at the inlet or outlet of a control device if the flow to that control device could be intermittent. One commenter recommended that § 63.2475(g) be deleted because the closed-vent system bypass monitoring provisions of subpart SS already indicate whether a control device is being bypassed. Similarly, the second commenter questioned the need for flow indicators and asserted that if the concern is diversion of the vent to the atmosphere, then this prohibition should be so stated. That commenter was also concerned that, since essentially all batch process vents have intermittent flows, the requirement for flow indicators on vents with intermittent flows translates into the installation of numerous flow indicators with high QA/QC costs. The commenter noted that car seals or monthly inspections are allowed in other rules and requested that the flow indicator requirement be withdrawn, or that we explain how the expense in maintaining such devices translates into an environmental benefit. A third commenter also questioned whether the intent was to detect no flow or to detect when a bypass is occurring. The commenter contended that detecting no flow for batch processes is not useful because the flows are intermittent. If the intent is to detect bypasses to the atmosphere, the commenter requested that the final rule incorporate text from 40 CFR 63.114(d)(1) and (2) to clarify the intent.

Two commenters requested that the final rule allow the following alternatives to the use of flow indicators: indicators of vent gas flow, such as duct positions or fan operation; and the use of on/off interlock type devices that are not subject to calibration. One commenter contended that maintaining records of an interlocked valve limit-switch position should be sufficient when the valve only opens to allow flow when pressure is above a specified level.

Response: The commenters are confusing the requirement in § 63.2475(g) of the proposed rule with the requirement in Item 4 of Table 5 of the proposed rule. Table 5 of the proposed rule would require a flow indicator in a bypass line to indicate any diversion of flow from the control device. On the other hand, the proposed requirement in § 63.2475(g) to install, calibrate, and operate a flow indicator at the inlet or outlet of a control device if the flow to that control device could be intermittent is for identifying periods when monitored parameter readings should not be included in the daily or block average. This provision was included because periods of no flow are equivalent to periods of non-operation (*i.e.*, the control device is not actually reducing emissions during these periods and, therefore, should not be used to demonstrate ongoing compliance).

Both provisions have been retained in the final rule. The requirements for

bypass lines are specified in 40 CFR 63.983(a)(3), which are referenced from § 63.2450 of the final rule. The requirement to use flow indicators to identify periods of no flow through control devices is specified in § 63.2460(c)(7) of the final rule. We also note that the final rule allows the use of car seals and lock and key configurations as an alternative to the use of flow indicators in bypass lines. Furthermore, the definition of "flow indicator" in 40 CFR 63.981 does not restrict the type of device that can be used as a flow indicator in a bypass line. However, we have not allowed seal mechanism alternatives in § 63.2460(c)(7) of the final rule because these techniques cannot identify periods of no flow through a control device.

The definition of "flow indicator" in 40 CFR 63.981 is also inadequate for the purposes of § 63.2460(c)(7) of the final rule because it includes any device that only indicates whether the valve position would allow gas flow to be present in the control device. Therefore, the final rule specifies that for the purposes of § 63.2460(c)(7), "flow indicator" means a device which indicates whether gas flow is present in a line. Also note that the required number of flow indicators required by § 63.2460(c)(7) is related to the number of control devices, not the number of batch process vents.

Comment: One commenter claimed that the requirement not to use periods of "no-flow" in data averages is impossible to meet because most regulated streams have many periods of no flow (*i.e.*, more than 25 percent of the time) and, thus, this requirement would force noncompliance with the data availability requirement. The commenter contended that no flow periods are only relevant when flow is the parameter being monitored (*e.g.*, scrubber flow). The commenter noted that, where the parameter being monitored is not flow, then as long as the control device is operating properly (*e.g.*, flare has pilot flame, combustion device is operating at or above its minimum temperature), the rule requirements are met, regardless of flow.

Response: We decided to retain the "no flow" provision in the final rule. This provision is consistent with 40 CFR part 63, subpart GGG. It was added to subpart GGG to ensure that a source would not incur a "deviation" from the operating limits during periods when there are no HAP emissions being routed to the control device. For the same reason, it is applicable to the miscellaneous organic chemical manufacturing source category as well. We also note that periods of no flow are excluded from the operating hours when calculating the 75 percent data availability requirement and, therefore, excluding these data will not result in non-compliance with the data availability requirements.

L. Recordkeeping and Reporting

Comment: Several commenters suggested moving the necessary recordkeeping elements from the definition of "operating scenario" to a new paragraph in the recordkeeping section (§ 63.2525). In addition, the commenters recommended excluding the following requirements from both the definition and the new recordkeeping section: a description of emission episode durations and a listing of vent-by-vent control levels for every operating scenario. Several commenters also expressed concern with the provision that a change in any of the elements of the definition constitutes a new operating scenario. They considered this provision burdensome because variations in some of the listed information (*e.g.*, a change in calculation and engineering analyses) can be construed as requiring separate operating scenarios even if the variation does not change the applicable requirements. One commenter stated that the manufacture of a new product in existing nondedicated equipment should not trigger a new operating scenario unless the compliance approach is different for the new product than it is for existing products. Furthermore, the commenter stated that reconfiguring equipment in a process or across processes should not in and of itself trigger a new operating scenario, unless it triggers new applicable requirements.

Response: After considering these suggestions, we decided to move the recordkeeping elements from the proposed definition to § 63.2525 of the final rule, but we did not change the recordkeeping elements themselves. We did not exclude the emission episode durations from the list of recordkeeping elements because this is an essential element in the calculation of emissions for events such as a purge or a vacuum operation. Note that if duration is not used in the calculation for a particular emission event or is not necessary in the compliance demonstration, there is no need to include it in the operating scenario. We did not exclude the requirement to specify vent-by-vent control levels because this information is important when batch process vents within a process are controlled to different levels. Also, because continuous process vents are regulated individually, it is important to identify the actual control level for each vent. If all vents are controlled to the same level, then a simple statement indicating the control level is all that is needed for the operating scenario.

We also clarify in § 63.2525 that records are required of only those elements that are applicable (*i.e.*, the level of detail required for some compliance options will be greater than for others). For example, for compliance with the 20 ppmv outlet concentration standard when worst-case conditions are defined by the conveyance system limitations rather than by the process, it is not necessary to provide emission calculations for vents that are routed to the control device.

Comment: One commenter recommended deleting the requirement to submit as part of the compliance report each new operating scenario operated during the reporting period. Several other commenters asked that we revise the language to specifically require only a listing of the new operating scenarios in the compliance reports. According to one commenter, operating scenarios duplicate title V requirements, which is unnecessary and confusing. Another commenter stated that the requirement to submit each new operating scenario could result in the generation of a significant quantity of information, especially for batch processors who have the potential for hundreds of different operating scenarios. One commenter stated that the requirement to submit operating scenarios as part of the compliance report when there are deviations is unwarranted. According to the commenter, while listing the scenarios under which a source was operating during noncompliance events may be necessary, listing all of the scenarios under which a process unit might be operating is excessive and unnecessary.

Response: The final rule clarifies requirements for documenting and reporting operating scenarios. Our position is that submitting operating scenarios is critical to enforcement of the final rule, as they provide much of the information required to demonstrate compliance. Information in operating scenarios also is the cornerstone of the management of change strategy that was developed to address the constantly changing processing environment associated with batch processors. Although this management of change flexibility is optional at the discretion of the regulatory authority, 40 CFR part 63, subpart FFFF, provides the framework for implementing the strategy. Therefore, the final rule retains the requirement that complete operating scenarios must be submitted.

However, we have written the final rule to clarify that only one copy of any operating scenario must be submitted. Specifically, we wrote the final rule to require that the actual operating scenarios for planned processes, rather than just a list of operating scenarios, must be submitted in the NOCS report. Any operating scenarios in the future for new processes must be submitted in the compliance report for the reporting period in which the operating scenario is first operated. The notification of process change, which for the final rule is included as part of the compliance report, must contain revised operating scenarios for changes to existing processes. We also eliminated the statement in the provisions for notification of process changes that specifies "a process change means the startup of a new process" because it is inconsistent with the above mentioned clarifications. Finally, we deleted the requirement to submit operating scenarios with other information about deviations in the compliance report because the operating log, by definition, is a listing of the scheduled operating scenarios, and a copy of the operating scenarios themselves would already have been submitted either as part of the NOCS report or in a previous compliance report.

Comment: According to the proposed definition, one type of deviation is any instance in which an affected source fails to meet any term or condition that is adopted to implement an applicable requirement in 40 CFR part 63, subpart FFFF, and that is included in the operating permit for any affected source required to obtain such a permit. One commenter recommended deleting this language from the definition because it appears to extend the definition to requirements imposed under title V, rather than subpart FFFF. For example, the commenter suggested that if a permitting authority imposes a throughput requirement on a storage tank subject to subpart FFFF or a NO_X limit on a control device used to comply with subpart FFFF, this language could be read to make any deviation of those limits reportable and a potential violation under subpart FFFF, as well as under title V.

Response: We have not deleted the cited language because we disagree with the commenter's interpretation that it extends deviations to requirements under title V. Paragraph (2) of the proposed definition of "deviation" is an important clarification. Sources are obligated under title V and 40 CFR part 70 to report as deviations any failure to meet "any term or condition that is adopted to implement an applicable requirement in [subpart FFFF] and that is included in the operating permit for any affected source required to obtain such a permit." As such, the paragraph does not add any additional obligations. However, it does clarify for source owners and operators reviewing subpart FFFF that this is their obligation for deviation reporting under title V.

Comment: Four commenters recommended using different terms or significantly changing the definition of deviation. Two commenters recommended replacing the term "deviation" with the term "excursion" throughout the rule to avoid confusion that could be caused because the proposed definition of deviation differs from the meaning normally ascribed to the term in the title V program. One commenter suggested using "excursion" to apply to situations where the monitored parameter is outside of the required range, and using the term "deviation" to represent an actual demonstrated excess emissions event or nonconformance with a published standard in the rule.

Response: We have not changed the terminology. According to the definition, a deviation includes any instance in which an owner or operator fails to meet any requirement or obligation established by 40 CFR part 63, subpart FFFF, including but not limited to any emission limit, operating limit, or work practice standard. An "excursion," as defined in 40 CFR part 63, subparts G and SS, is a failure to meet an operating limit. Therefore, excursions are a deviation under subpart FFFF.

Comment: One commenter asserted that the attempt to extend deviation reporting to work practices in § 63.2520(d)(5) and (e) of the proposed rule is unclear, arbitrary, and capricious. The commenter stated that each work practice standard itself identifies what has to be reported in the compliance report. According to the commenter, adding a new, undefined requirement to report "deviations from the requirements for work practice standards in Table 19" just adds confusion and appears to add a new arbitrary class of deviation that is not supported in any rulemaking record. In addition, the commenter was unsure how we expect facilities to measure deviations from some of the work practices (*e.g.*, fugitive monitoring) listed in Table 19. Therefore, the commenter recommended that we remove the requirement for deviation reporting for work practice standards from § 63.2520(d)(5)(i) and (ii), including the list of information items in § 63.2520(d)(5)(ii)(A) through (C) (operating time, deviations, and operating logs/scenarios). The commenter also recommended deleting the phrase "or work practice standard" from § 63.2520(e). This commenter stated that § 63.2520(d)(5)(ii)(B) and (iii)(D) and the availability of more detailed records are all that are needed to identify deviations.

Response: A deviation is defined, in part, as "any instance in which an affected source fails to meet any requirement or obligation established by this subpart, including * * * any * * * work practice standard." Specifically, a source must report "any instance" where it has not complied with any work practice standard. For instance, compliance with the work practice standard for equipment leaks includes monitoring and inspecting on the applicable schedule, monitoring for the correct leak definition, repairing leaks within the specified timeframe, and keeping records, as well as reporting the information specified in § 63.1018(a) of 40 CFR part 63, subpart TT, or § 63.1039(b) of 40 CFR part 63, subpart UU. We would also find this information useful in assessing compliance with the work practice standards. If a source failed to repair a leak within the specified timeframe, it would be required to report that as a deviation. However, we have decided that submitting operating logs is unnecessary for deviations from the work practice standard for equipment leaks.

Comment: One commenter requested clarification of the time period when deviations can occur. According to the commenter, it is not possible to have a deviation until operating limits and continuous monitoring system (CMS) parameters have been established. The commenter noted that, as provided in the General Provisions, compliance with these limits begins with the submission of the NOCS report.

Response: We disagree with the commenter's conclusion. Section 112(i)(3) of the CAA statutorily forbids allowing more than 3 years from the effective date of the standards to achieve compliance. Therefore, at any time after the compliance date, a source may be found out of compliance, even if that is before the NOCS report is due or the date that performance tests are conducted.

Comment: Two commenters recommended deleting the requirement to submit operating logs as part of the compliance report when there are deviations. According to the commenters, this requirement is unclear, in part because it does not define "operating logs," which could be

broadly interpreted and will mean different things to different people; it will not benefit EPA in compliance reviews because operating logs do not contain information relevant to a noncompliance event, and they may not reflect the actual cause of the event; and it is burdensome. As an example of the potential burden, one commenter noted that, for a source monitoring 50,000 components monthly for 6 months, a deviation from the equipment leak work practice standard would require a submittal of 4,500 pages of operating logs (based on 300,000 component readings at 66 lines per page).

Response: The operating log, which is a record required by § 63.2525(c) of the final rule, is simply a schedule or list of the operating scenarios that have been run. We clarified this requirement in the final rule by stating it is to be "updated each time a different operating scenario is put into operation." The reporting requirement in § 63.2520(e)(5)(iii)(K) of the final rule has also been written to clarify that the operating log is only required for days during which deviations occurred. Furthermore, since deviations of the work practice standard for equipment leaks are unlikely to be associated with a single operating day, the final rule specifies that logs do not have to be submitted for such deviations.

Comment: Two commenters recommended deleting the precompliance report. One of the commenters noted that a precompliance report is not required by the HON. According to the second commenter, the precompliance report duplicates the review and approval process of title V and the content of the NOCS report and greatly reduces available compliance time. The commenter also argued that the precompliance report is unworkable because it requires data that can only be obtained from the performance test and from operating experience.

Response: We contend that the precompliance report is a valuable tool for the regulatory agency responsible for making compliance determinations for the affected source. Its purpose differs significantly from the compliance plan that is part of the title V requirements. It provides an enforcement official or inspector with some initial background information about the process being controlled, the types of emissions associated with the process, corresponding control equipment, and the monitoring parameters that have been or will be correlated to the process conditions.

A precompliance report is not required for all facilities. The main purpose of the precompliance report is that it is the mechanism by which an affected source requests approval to use alternative monitoring parameters, alternative techniques allowed in the final rule (*e.g.*, pollution prevention), and calculations or other compliance procedures that differ from those prescribed in the final rule. In return for this flexibility, it is important that alternative procedures be approved before the compliance date to ensure that there is no noncompliance resulting from selection of an unacceptable approach. Furthermore, many of the alternative techniques in the final rule are more complicated than standard requirements like those in the HON. Therefore, we have retained the precompliance report in the final rule.

Comment: Two commenters claimed that much of the information required to be submitted in the NOCS report is already required by the referenced subparts or the General Provisions, and the additional information that must be submitted under the proposed rule is excessive.

Response: In general, the final rule references the notification requirements in the applicable subparts (*i.e.*, 40 CFR part 63, subparts G, SS, and GGG) and specifies only the necessary exceptions and additional requirements. However, the overall requirements are the same as the proposal. We generally disagree with the commenter regarding the request to delete requirements beyond those in the referenced subparts. For example, requirements to identify operating scenarios are applicable to continuous operations. Because the operating scenario need only be as detailed as necessary to demonstrate compliance with the final rule, the operating scenario for a continuous operation may not require as much information as one for batch operations. If, for example, a continuous operation has only continuous process vents and storage tanks, no calculation of uncontrolled or controlled emissions is necessary to satisfy the requirement of § 63.2525(b)(7) of the final rule; instead, calculations and engineering analyses consist of TRE calculations for the continuous vents. We note that for every element of the operating scenario described in § 63.2525(b), information is required that is necessary to document how the source is complying with 40 CFR part 63, subpart FFFF. However, we have also made some changes and clarifications to the NOCS requirements. For example, for operating limits, only the resulting values are to be reported, and the procedure used to establish them is supporting documentation that is maintained as a record. For applicability, only the results of applicability determinations have to be submitted. Supporting documentation is maintained as a record under § 63.2525(a)(1).

Comment: Several commenters requested the following changes in the compliance reporting schedule and due dates: (1) Clarify when the first report is due because the proposed language appears to be internally inconsistent, (2) change the beginning date of the first reporting period to the date the notification of compliance status is due rather than the compliance date, and (3) allow 60 days rather than 30 days to prepare the report after the end of the reporting period.

Response: The final rule clarifies our intent that the first reporting period is to span a period between 6 and 12 months. To be consistent with other rules, we also decided to provide 60 days to prepare the compliance reports. Although we have decided to make the notification of compliance status due 150 days after the compliance date rather than by the compliance date, the reporting period for the first compliance report is unchanged in the final rule because sources must be operating monitoring equipment and conducting other ongoing compliance activities beginning on the compliance date.

Comment: Two commenters were concerned that some of the data that must be submitted in the precompliance report are CBI and should not be required. Commenters also are concerned that some of the requested information for operating scenarios is CBI.

Response: We recognize that certain information needed to complete the precompliance report and operating scenarios in the NOCS report may be confidential. Precompliance and NOCS reports are considered to be submitted to the Administrator under CAA section 114 even if they are submitted to a State or local agency acting on the Administrator's behalf (40 CFR 2.301(b)(2)) and, as such, are entitled to protection under section 114(c) of the CAA or 40 CFR 2.201–2.311, provided they meet the criteria set forth in the statute and regulations. If you claim that any portion of these reports is entitled to such protection, the material that is claimed as confidential must be clearly designated in the submission.

Comment: Several commenters objected to the notification of process change requirements in § 63.2515(f) of the proposed rule. One commenter stated that the requirement to report any process change, change in operating scenarios, or change in information submitted in the NOCS report would be impossibly burdensome for complex

specialty batch processing systems, and it would offer no environmental benefit. According to the commenter, frequent, even daily, changes are normal and necessary requirements of such facilities. The commenter stated that facilities should only be required to report changes that result in non-conformance with emission limits or control efficiency requirements, or that cause a process to exceed the 10,000 lb/yr uncontrolled HAP threshold, thereby triggering compliance requirements under subpart FFFF.

Other commenters stated that the proposed notification of process change requirement is too expansive, imposing a reporting burden which totally duplicates title V change requirements. One of these commenters stated that there is no need to submit reports for a process change unless the process change brings about new applicable requirements. According to the commenter, an example of a situation where there would be no need to report is the startup of a new process in an existing MCPU for a new product, or family of products, which emits no HAP; or requires no new or different controls, work practices, or monitoring; and brings about no new applicable requirements. Both commenters noted that any process change that generates a new or modified applicable requirement may be anticipated by the facility and would be reported and/or incorporated in the title V permit. Therefore, according to the two commenters, providing 60-day prior notifications of process changes (*e.g.*, in separate notices or in the semiannual compliance report) would be unnecessary, wasteful, and burdensome. Therefore, the commenters recommended deleting the notification of process change requirement in § 63.2515(f).

Response: We disagree with the commenters. These records are needed to document continuous compliance. As stated before, the level of detail associated with information provided in operating scenarios depends on the compliance options and strategy chosen. For example, we provide concepts like standard batches to account for variability that could be introduced into a process without triggering new applicable requirements. Standard batches mean a range of operating conditions can be covered as part of a single operating scenario. Likewise, demonstrating initial compliance under worst-case conditions means information in the notification of compliance status should rarely change. Therefore, we do not agree that the requirements to report process changes are unnecessarily burdensome.

M. Startup, Shutdown, and Malfunction

Comment: Several commenters requested changes to the definition of "startup." Their primary concern is the statement that excludes the first time equipment is put into operation after a shutdown for maintenance and at the start of a campaign to produce a product that has been produced in the past. One commenter stated that actions to bring a batch campaign online, regardless of whether previous campaigns of that product have been run in the past, to be completely different and more complex than the routine activities conducted between batches within a campaign, and these operations are not always predictable. Another commenter indicated startups should apply after shutdowns for maintenance to avoid safety and environmental issues associated with trying to run controls with air and/or inerts in the system. Finally, one commenter claimed the exclusions are illegal because we did not collect information for periods of SSM.

Several commenters also opposed the exclusions from the definition of "shutdown" for the cessation of a batch process at both the end of a campaign and for routine maintenance. According to one commenter, shutting down a process unit after a campaign involves completely different and more complex procedures than those conducted between batches in a campaign; these operations are not always predictable, and there is no difference between shutting down between campaigns and a maintenance shutdown of a continuous process after a production run.

Response: We have considered similar comments on previous rulemakings involving batch processors. Commenters in the past suggested that operating practices for controls used with batch processes are the same as those for controls used with continuous processes and argued for similar provisions. Our response was to provide a definition of startup and shutdown that would consider situations when operators would be unfamiliar with the equipment operation or it might not be possible to follow standard operating procedures. However, we thought that a startup after maintenance, after switching to a product that has been produced in the past, or the startups between batches during a campaign are all routine, normal operating conditions that should result in the same standard batch. Similarly, we considered shutdown at the end of a campaign, between batches, or for planned, preventative maintenance to be normal operations and resulting in the same standard batch. Our rationale for providing separate requirements for continuous processes was that a startup or shutdown for any reason results in operation under conditions different from the normal steady-state operation, which is not the case for batch operations.

We accept the commenters' statement that actions to bring a batch campaign on-line, regardless of whether previous campaigns of that product have been run, or after a shutdown for maintenance, could be completely different and more complex than the routine activities conducted between batches within a campaign. This could also be the case, as commenters argue, after cessation of operation for various reasons. Therefore, we are persuaded that when these operations are outside of operations covered by a standard batch (or a nonstandard batch, as described below), that they should be covered by the SSM provisions.

Related to this issue is our concept of nonstandard batch, which describes a situation where operations are conducted outside the range of conditions established by a standard batch or where steps are repeated or deleted that contribute to emissions from the batch and, therefore, must be considered in determining compliance. For example, if QA/QC metrics are not met at a certain step of a process, and a material must be recrystallized or purified to a greater degree than originally prescribed by the standard operating procedure, extended processing steps must be considered. In these instances, owners and operators are required to calculate emissions from the nonstandard batch and verify compliance with the standards. These instances would not be considered part of the SSM provisions because they can be reasonably anticipated. As a result, we have defined the term "nonstandard batch" in the final rule to describe situations that are not standard batches, but also are not malfunctions.

Comment: One commenter asserted that SSM provisions in proposed § 63.2490 are unlawful. According to the commenter, allowing sources to avoid enforcement actions merely by demonstrating that they were in compliance with their own SSM plans necessarily allows them to operate in less than continuous compliance even if their deviations were avoidable. The commenter indicated that the CAA makes it clear that sources must be in compliance with emissions standards continuously, except for unavoidable deviations during SSM.

Response: We recently adopted final amendments to the General Provisions which address the concerns raised by the commenter (68 FR 32586, May 30, 2003). The final amendments clarify that § 63.6(e)(1)(i) establishes a general duty to minimize emissions. During a period of SSM, that general duty requires an owner or operator to reduce emissions to the greatest extent consistent with safety and good air pollution control practices. However, "during an SSM event, the general duty to minimize emissions does not require an owner or operator to achieve the levels required by the applicable MACT standard at other times, or to make further efforts to reduce emissions if such levels have been successfully achieved." As discussed in the preamble to the final amendments, we disagree with the commenter's legal position that sources' compliance with SSMP requirements in lieu of applicable emission standards is permissible only where violations of emission limitations are "unavoidable." As stated in the preamble to the final amendments to the General Provisions, "[w]e believe that we have discretion to make reasonable distinctions concerning those particular activities to which the emission limitations in a MACT standard apply * * * However, we note that the general duty to minimize emissions is intended to be a legally enforceable duty which applies when the emission limitations in a MACT standard do not apply, thereby limiting exceedances of generally applicable emission limitations to those instances where they cannot be reasonably avoided." (68 FR 32590, May 30, 2003). We further explained that the general duty to minimize emissions requires that owners or operators review their SSMP on an ongoing basis and make appropriate improvements to ensure that excess emissions are avoided.

Comment: Several commenters disagreed with a number of the proposed SSM requirements. They indicated that monitored parameter values during periods of SSM should not be included in daily averages, and that to do so distorts the results for periods of normal operation and is inconsistent with the General Provisions and previous rules. Commenters also stated that it is not possible to have a deviation from the emission limit or work practice standard during SSM periods because the only requirement during such periods is to comply with the SSMP. Therefore, the commenters stated that the definition of "deviation" is inconsistent with the General Provisions and should be changed to delete the statement that conflicts with this point, and there should be no requirement to document deviations during SSM periods in the compliance reports. According to the commenters, records of every SSM event, as required by the General Provisions, are unnecessary and wasteful. The commenters recommended replacing this provision, like in many other rules, with a requirement to keep records only of events during which excess emissions occur. Finally, commenters recommended deleting the requirement to submit an immediate SSM report each time actions taken differ from the SSMP.

Response: We disagree with the comment that the definition of deviation is inconsistent with the General Provisions. As recently amended, 40 CFR 63.6(e)(1)(i) requires operation at all times (including periods of SSM) in a manner consistent with safety and good air pollution control practices for minimizing emissions. The General Provisions state that the general duty to minimize emissions during a period of SSM does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times if this is not consistent with safety and good air pollution control practices, thus allowing for compliance with the SSMP in the event that the standard cannot otherwise be met. However, we further clarified in the recent amendments that a source will not be considered to have satisfied the duty to minimize emissions merely because it complied with an inadequate SSMP. Furthermore, the General Provisions do not say there cannot be a deviation during periods of SSM. They only state (in § 63.7(e)(1)) that emissions in excess of the level of the relevant standard during periods of SSM shall not be considered a violation of the relevant standard, unless a determination of noncompliance is made under § 63.6(e). As discussed in response to the previous comment, recent final amendments to the General Provisions changed § 63.6(e) to clarify a source's compliance obligations during SSM events. As noted previously, the final rule references most of the requirements in 40 CFR part 63, subpart SS. For calculating daily averages, subpart SS specifies that monitoring data collected during periods of SSM are to be excluded. However, we excluded this provision from 40 CFR part 63, subpart FFFF. If data from SSM events are excluded from the daily (or block) average, then we would not have sufficient information to assess whether a deviation has occurred for a day containing a reported SSM event that we subsequently determine is not properly an SSM event.

Another requirement in subpart SS is that records of SSM events (*i.e.*, confirmation that actions taken were consistent with the SSMP or a description of any inconsistent actions) must be maintained only if excess emissions occur. For the final subpart FFFF, we decided that this requirement, rather than records of every SSM event as specified in the General Provisions, provides sufficient information about SSM events (note that it applies for all SSM periods, not just those subject to subpart SS), which means determination of excess emissions is critical. The final rule defines excess emissions as "emissions greater than those allowed by the emission limit." When a CMS is used to demonstrate compliance with an operating limit, this means excess emissions occur when the operating limit is not met. As noted above, compliance with an operating limit is based on a daily or block average, not an average over shorter periods such as a period of SSM. Thus, SSM records are required for each SSM event that occurs when you have a deviation of the operating limit for the day or block.

We disagree with the commenter's contention that sources should not be required to report deviations that occur during SSM events. Reporting of deviations from emission limits, operating limits, and work practice standards that occur during SSM events is necessary because events claimed to be SSM events by the source may not be viewed as approved SSM events by EPA. Furthermore, § 63.998(c)(1)(ii)(E) and (d)(3) of subpart SS already require records of each SSM event during which excess emissions occur, and as such the additional requirement to report such records is not unduly burdensome.

We agree that immediate notifications are not necessary. The industries covered by this source category generally have extensive upset/SSM reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act and state reporting requirements that should be adequate in supplying timely notification of events. Further, the final rule requires information regarding actions inconsistent with the SSMP to be submitted in semiannual compliance reports. For these reasons, and to maintain consistency with the HON and the CAR rules, we have overridden the immediate SSM reporting required by §§ 63.6(e)(3)(iv) and 63.10(d)(5)(ii) of the General Provisions.

N. Change Management

Comment: Regarding EPA's solicitation of comments concerning process change management, one commenter suggested relying on the title V constructions for process change management whenever possible. According to the commenter, adding change management provisions to the rule (beyond requiring facilities that change the underlying potential to emit assumptions to comply with the construction and/or operating permit requirements of their permitting authority) could only be justified when a campaign is introduced that changes the underlying evaluation of the worst case for a specific production unit. Otherwise, the commenter argued, any additional change management requirements would just increase the compliance burden on already overworked permitting authorities.

The commenter specifically requested that § 63.2515(f) be modified to exempt from separate reporting any process change that is managed according to regulations and procedures required by a permitting authority under an approved title V program. The commenter requested that facilities that process such a change request through the title V program or incorporate the change into a title V permit should only have to designate in that filing how the change impacts the 40 CFR part 63, subpart FFFF, compliance program at the facility. According to the commenter, this change would significantly decrease the burden on permitting authorities and facilities by requiring the permitting authorities to manage the same issue only once.

Regarding the solicitation of comments about change management being required for facilities complying with the alternate standard, the commenter stated that, for any facility restricting control device emissions to a documented 20 ppmv, the activities occurring before the control device are not able to significantly change the emissions profile to the environment as long as the maximum air flow through the control device does not change.

Response: Our intent in requiring operating scenarios, testing under worst-case conditions, and specification of conditions under which process changes are reported is to provide a framework for managing changes that may be frequent because of the nature of batch specialty chemical processing operations without introducing additional burden on permitting authorities and facilities. We intend, for example, that the standard batch and overall operating scenario cover the anticipated range of conditions of a process; only in cases where a change is made that would fall outside of the standard batch would a new standard batch and operating scenario be required. However, we consider it inappropriate for the final rule to exempt any process change that is managed according to title V, as one commenter requested. For all practical purposes, 40 CFR part 63, subpart FFFF, specifies the information required to determine applicable requirements for the MACT standards that are incorporated into the title V permits. Finally, the final rule is consistent with the commenter's proposed approach to managing change for a process in which a control device is tested under worst-case conditions using limitations of the capture and conveyance system. The operating scenario in this case is simple, and no detailed information on the emission events controlled by the device are necessary. Likewise, if a process change occurred in the process, no new operating scenario is required because the existing operating scenario still applies.

Comment: One commenter made two comments regarding EPA's solicitation of comments on process change management as it relates to title V permits. First, noting that the solicitation of comments specifically referenced the Pharmaceuticals Production MACT, the commenter stated that the consideration under that rule authorizing States to allow facilities to introduce new processes into existing equipment or install stockpiled equipment without reopening title V permits would apply with equal force to 40 CFR part 63, subpart FFFF. The commenter noted that many batch and specialty chemical facilities frequently introduce new processes into existing equipment or install stockpiled equipment. According to the commenter, such facilities need to have the flexibility to respond quickly to the results of their research and development activities and changes in market conditions in a cost-effective manner and without opening a lengthy permitting process. Therefore, the commenter recommended that we provide a discussion of change management for subpart FFFF that is similar to that provided in the preamble to the final Pharmaceuticals Production MACT.

Second, the commenter noted that the Pharmaceuticals Production MACT encouraged States to allow for flexible permitting of facilities and avoid permit revisions where reasonably anticipated alternative operating scenarios can be established in title V permits and supported with detailed operating logs. The commenter also noted that the pharmaceuticals change strategy authorized new process equipment to be brought into service, without permit modification, where it is either like-kind replacement or existing onsite equipment not in current service. According to the commenter, the miscellaneous organic chemical manufacturing source category would involve the same industry contacts and supporting rationales that we cited in the Pharmaceuticals Production NESHAP. Therefore, the commenter recommended that we include similar provisions in subpart FFFF.

Response: As the commenter noted, the preamble to the final Pharmaceuticals Production NESHAP (63 FR 50309, September 21, 1998) provided a detailed discussion of change management procedures as applied to pharmaceuticals production. We have decided not to include a similar discussion here. Sources subject to 40 CFR part 63, subpart FFFF, may discuss their interest in change management procedures with EPA or the appropriate permitting authority on an individual basis.

O. Overlapping Requirements

Comment: Several commenters requested that the rule include language to address potential overlap between 40 CFR part 63, subpart FFFF, and various 40 CFR part 60 and part 61 rules. Each commenter was concerned with a different group of rules, but collectively they include subparts K, Ka, Kb, VV, DDD, III, NNN, and RRR in part 60 and subparts V, Y, BB, and FF in part 61. Typically, the commenters requested language consistent with language in other rules such as the HON, or language specifying that compliance with subpart FFFF constitutes compliance with an overlapping rule. For vents in an MCPU that contain no HAP but are subject to control under 40 CFR part 60, subparts DDD, III, NNN, and RRR, one commenter requested a provision that would allow facilities to opt to meet the continuous process vent requirements of subpart FFFF in lieu of continuing to comply with the NSPS requirements.

Response: We agree that there is a need to address potential overlap between subpart FFFF and various part 60 and part 61 rules, and we have written the final rule accordingly. In general, the language is consistent with language in previous rules. For example, the final rule includes language consistent with § 63.110(e)(1) for overlap with subpart FF of part 61. To address overlap with subpart BB of part

61, we included language consistent with language in § 63.110(c) of the HON. We also included language for overlap with subpart DDD of part 60 that is similar to the proposed language for subparts III, NNN, and RRR. In addition, for an MCPU with process vents that contain no HAP, but are subject to control requirements under subpart DDD, III, NNN, or RRR, the final rule also includes the suggestion to allow compliance with the control requirements in subpart FFFF for Group 1 process vents. In each case, the total organic compounds (TOC) must be considered as if they are organic HAP for purposes of compliance with subpart FFFF. For storage tanks subject to both subpart FFFF and 40 CFR part 60, subpart Kb, we decided to keep the proposed language and add another option. The new option in the final rule specifies that if control is required under subpart Kb and the tank is assigned to an MCPU, then compliance with the requirements for Group 1 storage tanks under subpart FFFF constitutes compliance with subpart Kb. Since the compliance requirements of 40 CFR part 61, subpart Y, are similar to the requirements in subpart Kb, we have decided to address overlap with subpart Y of part 61 by including language in the final rule that is consistent with the language used to address overlap with subpart Kb. We have not included language to address overlap with subparts K and Ka of part 60 because these rules apply to tanks storing petroleum liquids, which are not included in the miscellaneous organic chemical manufacturing source category. Finally, the final rule specifies that compliance with subpart FFFF constitutes compliance with subpart V in part 61 and subpart VV in part 60; alternatively, if you have an affected source with equipment subject to subpart V in part 61 or subpart VV in part 60, you may elect to comply solely with either subpart FFFF or the other applicable rule.

Comment: Commenters stated that the proposed applicability provisions and definitions do not go far enough to prevent multipurpose equipment from being subject to more than one MACT standard. Commenters suggested exempting all operations subject to another part 63 rule; designating subpart FFFF as the single applicable rule, or allowing facilities to pick any one of the applicable MACT rules; and using "primary product" and process unit group (PUG) concepts for clarifying applicability.

Response: We recognize that 40 CFR part 63, subpart FFFF, will affect manufacturers of specialty chemicals and other products whose multipurpose production processes are subject to other MACT standards, creating situations where there are overlapping requirements. The challenge is how to consolidate overlapping requirements and still maintain the MACT reductions anticipated from each of the various standards. Many MACT standards that regulate specialty chemicals, pesticide active ingredients (PAI), SOCMI, and polymers and resins have specific language relating to overlap. The predominant method of addressing possible overlap is by designating a primary product and requiring compliance with the final rule that applies to the primary product at all times when the flexible process unit is operating. The presumption is that the equipment should be regulated according to the standard that effectively applies for a majority of products produced.

After considering the provisions in previous rules, we decided to include in the final rule a provision that is essentially the same as in the PAI rule. This provision is based on developing a PUG from a collection of multipurpose equipment, determining the primary product for the PUG, and, generally, complying with the rule that applies to the primary product for all process units within the PUG. If the primary product is determined to be miscellaneous organic chemical manufacturing materials, then you must comply with subpart FFFF for all process units in the PUG. If the primary product is determined to be pharmaceutical products or PAI, then you must comply with 40 CFR part 63, subpart GGG or subpart MMM, respectively, for all MCPU in the PUG. Although we consider it unlikely, it is possible that the primary product of a PUG, as determined according to the procedures in subpart FFFF, could be material subject to another MACT rule such as 40 CFR part 63, subpart JJJ, even though it was not determined to be the primary product according to the procedures in subpart JJJ (*i.e.*, the PUG is a flexible operation unit under subpart JJJ). In this case, subpart FFFF only requires compliance with subpart FFFF for the MCPU in the PUG.

The PUG concept also overrides certain applicability provisions in other overlapping standards. For example, if the primary product of a PUG that is also a flexible operation unit for the purposes of subpart JJJ is determined to be an miscellaneous organic chemical manufacturing product, then the redetermination procedures for nonaffected units in subpart JJJ no longer apply. Another example is that subpart GGG no longer applies to pharmaceutical process units in a PUG for which the primary product is determined to be miscellaneous organic chemical manufacturing material. Similarly, if the primary product of a PUG is miscellaneous organic chemical manufacturing material, then any PAI process units in the PUG that previously were required to comply with subpart MMM now must comply with subpart FFFF.

A slight difference exists between the PUG language in the PAI rule and this current PUG language. In the PAI rule, each process unit in the PUG must have some processing equipment that overlaps with at least one other PAI process unit in the group. For subpart FFFF, this restriction has been revised to require only that each process unit must have processing equipment that overlaps with any other process unit (of any kind) in the group. This language allows greater flexibility in setting the boundaries of the PUG and potentially increases the number of operations considered as part of a PUG, extending the potential for consolidation of overlapping requirements and enabling all the operations considered part of a flexible unit operation in earlier MACT standards to fall into the same PUG. Since the change also creates the possibility that PUG developed under subparts MMM and FFFF would not be identical, subpart FFFF specifies that an owner or operator may use a PUG developed under subpart MMM rather than developing a PUG under subpart FFFF.

Comment: One commenter stated that the final rule should specify a date in the future where the MACT standard for a particular equipment configuration is "set" to avoid having to redetermine applicability as processes and equipment change.

Response: Previous part 63 rules require a prospective review of the 5 year period from the compliance date to predict the primary product and, with the exception of the HON, a subsequent periodic redetermination ranging from every year to every 5 years, or upon permanent cessation of the primary product production. We recognize that redetermination is a burden in that it may require changing control strategies to comply with a different rule if the primary product changes. To minimize any burden associated with such changes, the final rule requires a redetermination only if the PUG stops manufacturing the primary product. As with the initial determination, the redetermination is based on a 5-year projection of production. After redetermination, the PUG becomes

subject to whatever rule applies to the new primary product. In the absence of earlier declarations that production of the primary product has ceased, not making the primary product for a period of 5 years will be considered evidence that manufacturing of the primary product has ceased.

Comment: Several commenters requested that we make sure there is no overlap between the OLD MACT and 40 CFR part 63, subpart FFFF. Several commenters also asked for clarification of how to comply when there is overlap between subparts FFFF and HHHHH.

Response: The preamble to the proposed OLD rule stated our intent that all of the distribution sources at miscellaneous organic chemical manufacturing affected sources would be subject only to subpart FFFF, not the OLD rule. The proposed OLD rule also states that those emission sources that are controlled under the provisions of another 40 CFR part 63 NESHAP would not be part of the OLD affected source. Our position on this issue has not changed, and we expect to use the same language in the final OLD rule. Thus, subpart FFFF does not need to address overlap between the OLD rule and subpart FFFF because there will be no overlap.

The final rule handles overlapping requirements between subparts FFFF and HHHHH the same as described above for overlap between subpart FFFF and other part 63 rules. In addition, we have made changes to the definition of miscellaneous organic chemical manufacturing process and to the affected source that are designed to clarify which equipment is subject to subpart FFFF and which is subject to subpart HHHHH.

Comment: Two commenters requested that the final rule allow consolidation of all equipment leak LDAR programs under 40 CFR part 63, subpart FFFF, or any other single program. One of the commenters noted that many facilities are complying with a number of different programs that are effectively equivalent in terms of environmental protection, and consolidation will reduce confusion and eliminate significant enforcement effort by EPA and States in determining which LDAR program applies to which portion of a facility.

Response: The final rule allows for considerable consolidation of LDAR programs and specifies that compliance with subpart FFFF constitutes compliance with 40 CFR part 60, subpart VV, and 40 CFR part 61, subpart V. Furthermore, § 63.2535(d) of the final rule specifies that an owner or operator with an affected source under subpart FFFF and equipment subject to either 40 CFR part 63, subpart GGG or MMM, may elect to comply with subpart GGG or MMM, respectively, for all such equipment. The final rule also allows an owner or operator to elect to comply with the LDAR requirements in 40 CFR part 65, subpart F (*i.e.*, the CAR).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action 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 information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information requirements are not enforceable until OMB approves them. The ICR number is 1969.02.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The final NESHAP require maintenance inspections of the control devices but do not require any notifications or reports beyond those required by the NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping requirements collect only the specific information needed to determine compliance.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to total 71 labor hours per year at a total annual cost of $3,150 for 251 respondents. These estimates include one-time submissions of notifications and precompliance reports, preparation of an SSMP with semiannual reports for any event when the procedures in the plan were not followed, preparation of semiannual compliance reports, and recordkeeping. Total annualized capital/startup costs associated with the monitoring requirements for the 3-year period of the ICR are estimated at $256,000 per year. Average operation and maintenance costs associated with the monitoring requirements for the 3-year period are estimated at $92,000 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations in 40 CFR are in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the

approved information collection requirements contained in the final rule.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of the rule on small entities, small entity is defined as: (1) A small business ranging from up to 500 employees to up to 1,000 employees, depending on the NAICS code; (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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The maximum number of employees to be considered a small business for each NAICS code is shown in the preamble to the proposed rule (67 FR 16178).

After considering the economic impacts of the final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Our economic analysis identified as small businesses 27 of the 113 companies owning affected miscellaneous organic chemical manufacturing facilities. This constitutes 24 percent of the affected businesses. Although small businesses represent 24 percent of the companies within the source category, they are expected to incur 6 percent of the total industry compliance costs of $75 million. According to EPA's economic assessment, there is one small firm with compliance costs equal to or greater than 3 percent of its sales. In addition, there are three small firms with cost-to-sales ratios between 1 percent and 3 percent.

An economic impact analysis was performed to estimate the changes in product price and production quantities for the firms affected by 40 CFR part 63, subpart FFFF. The analysis shows that of the 49 facilities owned by affected small firms, one is expected to shut down after the implementation of the miscellaneous organic chemical manufacturing NESHAP.

It should be noted that the baseline economic condition of the facility predicted to close affects the closure estimate provided by the economic model, *i.e.*, facilities that are already experiencing adverse economic conditions will be more severely impacted than those that are not, and that the facility predicted to close appears to have low profitability levels currently.

Although the miscellaneous organic chemical manufacturing NESHAP will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to limit the impact of the rule on small entities. We have worked closely with the American Chemical Council and the Synthetic Organic Chemical Manufacturers Association. These trade organizations, which represent the majority of facilities covered by subpart FFFF, have represented their members at stakeholder meetings throughout the standards development process. We also worked with the small chemical manufacturers to develop a format for the process vent standard that is reasonable for the production of chemicals using batch processing in nondedicated equipment and provide several alternative ways to comply with the standards to allow as much flexibility as possible. Emissions averaging and the pollution prevention alternative standards help those small entities that have been proactive in reducing their HAP emissions and usage, respectively. Another alternative standard requires the outlet concentration of the control device to be less than 20 ppmv. Under this alternative, recordkeeping and reporting requirements are greatly reduced. In addition, we have included in the preamble guidance for 40 CFR part 70 requirements to minimize title V permit modifications for owners and operators that make frequent changes to their processes.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual costs of the final rule for any year is estimated to be about $75 million. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, the NESHAP contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132. None of the sources are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The 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. No tribal governments own or operate miscellaneous organic chemical manufacturing process units. Thus, Executive Order 13175 does not apply to the final rule.

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

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 1985, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to the Executive Order because it is based on technology performance and not health or safety risks.

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

The final 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. Approximately 51 million kwh/yr of electricity will be needed to operate refrigeration units, fans, and pumps for control systems. Approximately 680 million lb/yr of steam will be needed to operate steam-assist flares and steam strippers. Approximately 4.3 billion standard cubic feet per year (scf/yr) of natural gas will be needed to operate thermal oxidizers and flares, and about 1.0 billion scf/yr will be needed to generate steam. Generating the electricity will consume about 17,700 tpy of coal.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The final rule uses EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 15, 18, 25, 25A, 305, 316, 320, 624, 625, 1624, 1625, 1666, 1671, 8260, and 8270. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. The search and review results have been documented and placed in the docket for the NESHAP (Docket OAR–2003–0121). The search for emissions monitoring procedures for measuring emissions of the HAP or surrogates subject to emission limitations in these NESHAP identified 19 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing the available standards, EPA determined that 13 of the candidate consensus standards would not be practical due to lack of equivalency, documentation, and validation data. The 13 standards are: ASME C00031 or Performance Test Code 19–10–1981, ASTM D3154–91 (1995), ASTM D3464–96, ASTM D3796–90 (1998), ASTM D5835–95, ASTM D6060–96, ASTM E337–84 (Reapproved 1996), CAN/CSA Z2232.2–M–86, European Norm (EN) 12619 (1999), EN 1911–1,2,3 (1998), ISO 9096:1992, ISO 10396:1993, and ISO 10780:1994. Of the six remaining candidate consensus standards, the following five are under development or under EPA review: ASME/BSR MFC 12M, ASME/BSR MFC 13m, ASTM D5790–95 (1995), ISO/DIS 12039, and ISO/FDIS 14965. The EPA plans to follow, review, and consider adopting these candidate consensus standards after their development and further review by EPA is completed.

One consensus standard, ASTM D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS), is appropriate in the cases described below for inclusion in these NESHAP in addition to the currently available EPA Method 18 codified at 40 CFR part 60, appendix A for measurement of organic HAP or total organic compounds. Therefore, the standard ASTM D6420–99 is cited in the final rule.

Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 (Docket OAR–2003–0121) is a suitable alternative to Method 18 only where the target compound(s) are those listed in section 1.1 of ASTM D6420–99; and the target concentration is between 150 ppb(v) and 100 ppm(v).

For target compound(s) not listed in Table 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the regulation specifies that the additional system continuing calibration check after each run, as detailed in section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target

compound(s) not listed in section 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

As a result, EPA cites ASTM D6420–99 in subpart FFFF of part 63. The EPA also cites Method 18 as a gas chromatography (GC) option in addition to ASTM D6420–99. This will allow the continued use of GC configurations other than GC/MS.

Some EPA testing methods and performance standards are specified in §§ 63.2450(g) and 63.2485(h) of subpart FFFF. Subpart FFFF also references EPA testing methods specified in 40 CFR part 63, subparts G and SS. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, under § 63.7(f), the final rule also allows any State or source to apply to EPA for permission to use an alternative method in place of any of the EPA testing methods or performance standards listed in the NESHAP.

J. Congressional Review Act

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

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 25, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Part 63 is amended by adding a new subpart FFFF to read as follows:

Subpart FFFF—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing

Sec.

What This Subpart Covers

Compliance Dates

Emission Limits, Work Practice Standards, and Compliance Requirements

Alternative Means of Compliance

Notifications, Reports, and Records

Other Requirements and Information

Tables to Subpart FFFF of Part 63

What This Subpart Covers

§ 63.2430 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for miscellaneous organic chemical manufacturing. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limits, operating limits, and work practice standards.

§ 63.2435 Am I subject to the requirements in this subpart?

(a) You are subject to the requirements in this subpart if you own or operate miscellaneous organic chemical manufacturing process units (MCPU) that are located at, or are part of, a major source of hazardous air pollutants (HAP) emissions as defined in section 112(a) of the Clean Air Act (CAA).

(b) An MCPU includes equipment necessary to operate a miscellaneous organic chemical manufacturing process, as defined in § 63.2550, that satisfies all of the conditions specified in paragraphs (b)(1) through (3) of this section. An MCPU also includes any assigned storage tanks and product transfer racks; equipment in open systems that is used to convey or store water having the same concentration and flow characteristics as wastewater; and components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems that are used to manufacture any material or family of materials described in paragraphs (b)(1)(i) through (v) of this section.

(1) The MCPU produces material or family of materials that is described in paragraph (b)(1)(i), (ii), (iii), (iv), or (v) of this section.

(i) An organic chemical or chemicals classified using the 1987 version of SIC code 282, 283, 284, 285, 286, 287, 289, or 386, except as provided in paragraph (c)(5) of this section.

(ii) An organic chemical or chemicals classified using the 1997 version of NAICS code 325, except as provided in paragraph (c)(5) of this section.

(iii) Quaternary ammonium compounds and ammonium sulfate produced with caprolactam.

(iv) Hydrazine.

(v) Organic solvents classified in any of the SIC or NAICS codes listed in paragraph (b)(1)(i) or (ii) of this section that are recovered using nondedicated solvent recovery operations.

(2) The MCPU processes, uses, or produces any of the organic HAP listed in section 112(b) of the CAA or hydrogen halide and halogen HAP, as defined in § 63.2550.

(3) The MCPU is not an affected source or part of an affected source under another subpart of this part 63, except for process vents from batch operations within a chemical manufacturing process unit (CMPU), as identified in § 63.100(j)(4). For this situation, the MCPU is the same as the CMPU as defined in § 63.100, and you are subject only to the requirements for batch process vents in this subpart.

(c) The requirements in this subpart do not apply to the operations specified in paragraphs (c)(1) through (6) of this section.

(1) Research and development facilities, as defined in section 112(c)(7) of the CAA.

(2) The manufacture of ammonium sulfate as a by-product, if the slurry entering the by-product manufacturing process contains 50 parts per million by weight (ppmw) HAP or less or 10 ppmw benzene or less. You must retain information, data, and analysis to document the HAP concentration in the entering slurry in order to claim this exemption.

(3) The affiliated operations located at an affected source under subparts GG (National Emission Standards for Aerospace Manufacturing and Rework Facilities), KK (National Emission Standards for the Printing and Publishing Industry), JJJJ (NESHAP: Paper and Other Web Coating), future MMMM (NESHAP: Surface Coating of Miscellaneous Metal Parts and Products), and SSSS (NESHAP: Surface Coating of Metal Coil) of this part 63. Affiliated operations include, but are not limited to, mixing or dissolving of coating ingredients; coating mixing for viscosity adjustment, color tint or additive blending, or pH adjustment; cleaning of coating lines and coating line parts; handling and storage of coatings and solvent; and conveyance and treatment of wastewater.

(4) Fabricating operations such as spinning a polymer into its end use.

(5) Production activities described using the 1997 version of NAICS codes 325131, 325181, 325188 (except the requirements do apply to hydrazine), 325314, 325991 (except the requirements do apply to reformulating plastics resins from recycled plastics products), and 325992 (except the requirements do apply to photographic chemicals).

(6) Tall oil recovery systems.

(d) If the predominant use of a transfer rack loading arm or storage tank (including storage tanks in series) is associated with a miscellaneous organic chemical manufacturing process, and the loading arm or storage tank is not part of an affected source under a subpart of this part 63, then you must assign the loading arm or storage tank to the MCPU for that miscellaneous organic chemical manufacturing process. If the predominant use cannot be determined, then you may assign the loading arm or storage tank to any MCPU that shares it and is subject to this subpart. If the use varies from year to year, then you must base the determination on the utilization that occurred during the year preceding November 10, 2003 or, if the loading arm or storage tank was not in operation during that year, you must base the use on the expected use for the first 5-year period after startup. You must include the determination in the notification of compliance status report specified in § 63.2520(d). You must redetermine the primary use at least once every 5 years, or any time you implement emissions averaging or pollution prevention after the compliance date.

(e) For nondedicated equipment used to create at least one MCPU, you may elect to develop process unit groups (PUG), determine the primary product of each PUG, and comply with the requirements of the subpart in 40 CFR part 63 that applies to that primary product as specified in § 63.2535(l).

§ 63.2440 What parts of my plant does this subpart cover?

(a) This subpart applies to each miscellaneous organic chemical manufacturing affected source.

(b) The miscellaneous organic chemical manufacturing affected source is the facilitywide collection of MCPU and heat exchange systems, wastewater, and waste management units that are associated with manufacturing materials described in § 63.2435(b)(1).

(c) A new affected source is described by either paragraph (c)(1) or (2) of this section.

(1) Each affected source defined in paragraph (b) of this section for which you commenced construction or reconstruction after April 4, 2002, and you meet the applicability criteria at the time you commenced construction or reconstruction.

(2) Each dedicated MCPU that has the potential to emit 10 tons per year (tpy) of any one HAP or 25 tpy of combined HAP, and you commenced construction or reconstruction of the MCPU after April 4, 2002. For the purposes of this paragraph, an MCPU is an affected source in the definition of the term "reconstruction" in § 63.2.

(d) An MCPU that is also a CMPU under § 63.100 is reconstructed for the purposes of this subpart if, and only if, the CMPU meets the requirements for reconstruction in § 63.100(l)(2).

Compliance Dates

§ 63.2445 When do I have to comply with this subpart?

(a) If you have a new affected source, you must comply with this subpart according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) If you startup your new affected source before November 10, 2003, then you must comply with the requirements for new sources in this subpart no later than November 10, 2003.

(2) If you startup your new affected source after November 10, 2003, then you must comply with the requirements for new sources in this subpart upon startup of your affected source.

(b) If you have an existing source on November 10, 2003, you must comply with the requirements for existing sources in this subpart no later than November 10, 2006.

(c) You must meet the notification requirements in § 63.2515 according to the schedule in § 63.2515 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emission limits, operating limits, and work practice standards in this subpart.

Emission Limits, Work Practice Standards, and Compliance Requirements

§ 63.2450 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limits and work practice standards in Tables 1 through 7 to this

subpart at all times, except during periods of startup, shutdown, and malfunction (SSM), and you must meet the requirements specified in §§ 63.2455 through 63.2490 (or the alternative means of compliance in § 63.2495, § 63.2500, or § 63.2505), except as specified in paragraphs (b) through (s) of this section. You must meet the notification, reporting, and recordkeeping requirements specified in §§ 63.2515, 63.2520, and 63.2525.

(b) *Determine halogenated vent streams.* You must determine if an emission stream is a halogenated vent stream, as defined in § 63.2550, by calculating the mass emission rate of halogen atoms in accordance with § 63.115(d)(2)(v). Alternatively, you may elect to designate the emission stream as halogenated.

(c) *Requirements for combined emission streams.* When organic HAP emissions from different emission types (*e.g.*, continuous process vents, batch process vents, storage tanks, transfer operations, and waste management units) are combined, you must comply with the requirements of either paragraph (c)(1) or (2) of this section.

(1) Comply with the applicable requirements of this subpart for each kind of organic HAP emissions in the stream (*e.g.*, the requirements of Table 1 to this subpart for continuous process vents and the requirements of Table 4 to this subpart for emissions from storage tanks).

(2) Determine the applicable requirements based on the hierarchy presented in paragraphs (c)(2)(i) through (vi) of this section. For a combined stream, the applicable requirements are specified in the highest-listed paragraph in the hierarchy that applies to any of the individual streams that make up the combined stream. For example, if a combined stream consists of emissions from Group 1 batch process vents and any other type of emission stream, then you must comply with the requirements in paragraph (c)(2)(i) of this section for the combined stream; compliance with the requirements in paragraph (c)(2)(i) of this section constitutes compliance for the other emission streams in the combined stream. Two exceptions are that you must comply with the requirements in Table 3 to this subpart and § 63.2465 for all process vents with hydrogen halide and halogen HAP emissions, and recordkeeping requirements for Group 2 applicability or compliance are still required (*e.g.*, the requirement in § 63.2525(f) to track the number of batches produced and calculate rolling annual emissions for processes with Group 2 batch process vents).

(i) The requirements of Table 2 to this subpart and § 63.2460 for Group 1 batch process vents, including applicable monitoring, recordkeeping, and reporting.

(ii) The requirements of Table 1 to this subpart and § 63.2455 for continuous process vents that are routed to a control device, as defined in § 63.981, including applicable monitoring, recordkeeping, and reporting.

(iii) The requirements of Table 5 to this subpart and § 63.2475 for transfer operations, including applicable monitoring, recordkeeping, and reporting.

(iv) The requirements of Table 7 to this subpart and § 63.2485 for emissions from waste management units that are used to manage and treat Group 1 wastewater streams and residuals from Group 1 wastewater streams, including applicable monitoring, recordkeeping, and reporting.

(v) The requirements of Table 4 to this subpart and § 63.2470 for control of emissions from storage tanks, including applicable monitoring, recordkeeping, and reporting.

(vi) The requirements of Table 1 to this subpart and § 63.2455 for continuous process vents after a recovery device including applicable monitoring, recordkeeping, and reporting.

(d) Except when complying with § 63.2485, if you reduce organic HAP emissions by venting emissions through a closed-vent system to any combination of control devices (except a flare) or recovery devices, you must meet the requirements of § 63.982(c) and the requirements referenced therein.

(e) Except when complying with § 63.2485, if you reduce organic HAP emissions by venting emissions through a closed-vent system to a flare, you must meet the requirements of § 63.982(b) and the requirements referenced therein.

(f) If you use a halogen reduction device to reduce hydrogen halide and halogen HAP emissions from halogenated vent streams, you must meet the requirements of § 63.994 and the requirements referenced therein. If you use a halogen reduction device before a combustion device, you must determine the halogen atom emission rate prior to the combustion device according to the procedures in § 63.115(d)(2)(v).

(g) *Requirements for performance tests.* The requirements specified in paragraphs (g)(1) through (5) of this section apply instead of or in addition to the requirements specified in subpart SS of this part 63.

(1) Conduct gas molecular weight analysis using Method 3, 3A, or 3B in appendix A to part 60 of this chapter.

(2) Measure moisture content of the stack gas using Method 4 in appendix A to part 60 of this chapter.

(3) If the uncontrolled or inlet gas stream to the control device contains carbon disulfide, you must conduct emissions testing according to paragraph (g)(3)(i) or (ii) of this section.

(i) If you elect to comply with the percent reduction emission limits in Tables 1 through 7 to this subpart, and carbon disulfide is the principal organic HAP component (*i.e.*, greater than 50 percent of the HAP in the stream by volume), then you must use Method 18, or Method 15 (40 CFR part 60, appendix A) to measure carbon disulfide at the inlet and outlet of the control device. Use the percent reduction in carbon disulfide as a surrogate for the percent reduction in total organic HAP emissions.

(ii) If you elect to comply with the outlet total organic compound (TOC) concentration emission limits in Tables 1 through 7 to this subpart, and the uncontrolled or inlet gas stream to the control device contains greater than 10 percent (volume concentration) carbon disulfide, you must use Method 18 or Method 15 to separately determine the carbon disulfide concentration. Calculate the total HAP or TOC emissions by totaling the carbon disulfide emissions measured using Method 18 or 15 and the other HAP emissions measured using Method 18 or 25A.

(4) As an alternative to using Method 18, Method 25/25A, or Method 26/26A of 40 CFR part 60, appendix A, to comply with any of the emission limits specified in Tables 1 through 7 to this subpart, you may use Method 320 of 40 CFR part 60, appendix A. When using Method 320, you must follow the analyte spiking procedures of section 13 of Method 320, unless you demonstrate that the complete spiking procedure has been conducted at a similar source.

(5) Section 63.997(c)(1) does not apply. For the purposes of this subpart, results of all initial compliance demonstrations must be included in the notification of compliance status report, which is due 150 days after the compliance date, as specified in § 63.2520(d)(1).

(h) *Design evaluation.* To determine the percent reduction of a small control device, you may elect to conduct a design evaluation as specified in § 63.1257(a)(1) instead of a performance test as specified in subpart SS of this part 63. You must establish the value(s)

and basis for the operating limits as part of the design evaluation.

(i) *Outlet concentration correction for supplemental gases.* In § 63.997(e)(2)(iii)(C), the correction to 3 percent oxygen for emission streams at the outlet of combustion devices is required if you add supplemental gases, as defined in § 63.2550, to the vent stream or manifold.

(j) *Continuous emissions monitoring systems.* Each continuous emissions monitoring system (CEMS) must be installed, operated, and maintained according to the requirements in § 63.8 and paragraphs (j)(1) through (5) of this section.

(1) Each CEMS must be installed, operated, and maintained according to the applicable Performance Specification of 40 CFR part 60, appendix B, and according to paragraph (j)(2) of this section, except as specified in paragraph (j)(1)(i) of this section. For any CEMS meeting Performance Specification 8, you must also comply with appendix F, procedure 1 of 40 CFR part 60.

(i) If you wish to use a CEMS other than an Fourier Transform Infrared Spectroscopy (FTIR) meeting the requirements of Performance Specification 15 to measure hydrogen halide and halogen HAP before we promulgate a Performance Specification for such CEMS, you must prepare a monitoring plan and submit it for approval in accordance with the procedures specified in § 63.8.

(ii) [Reserved]

(2) You must determine the calibration gases and reporting units for TOC CEMS in accordance with paragraph (j)(2)(i), (ii), or (iii) of this section.

(i) For CEMS meeting Performance Specification 9 or 15 requirements, determine the target analyte(s) for calibration using either process knowledge of the control device inlet stream or the screening procedures of Method 18 on the control device inlet stream.

(ii) For CEMS meeting Performance Specification 8 used to monitor performance of a combustion device, calibrate the instrument on the predominant organic HAP and report the results as carbon (C 1), and use Method 25A or any approved alternative as the reference method for the relative accuracy tests.

(iii) For CEMS meeting Performance Specification 8 used to monitor performance of a noncombustion device, determine the predominant organic HAP using either process knowledge or the screening procedures of Method 18 on the control device inlet stream, calibrate the monitor on the predominant organic HAP, and report the results as C_1. Use Method 18, ASTM D6420–99, or any approved alternative as the reference method for the relative accuracy tests, and report the results as C_1.

(3) You must conduct a performance evaluation of each CEMS according to the requirements in 40 CFR 63.8 and according to the applicable Performance Specification of 40 CFR part 60, appendix B, except that the schedule in § 63.8(e)(4) does not apply, and the results of the performance evaluation must be included in the notification of compliance status report.

(4) The CEMS data must be reduced to operating day or operating block averages computed using valid data consistent with the data availability requirements specified in § 63.999(c)(6)(i)(B) through (D), except monitoring data also are sufficient to constitute a valid hour of data if measured values are available for at least two of the 15-minute periods during an hour when calibration, quality assurance, or maintenance activities are being performed. An operating block is a period of time from the beginning to end of batch operations within a process. Operating block averages may be used only for batch process vent data.

(5) If you add supplemental gases, you must correct the measured concentrations in accordance with paragraph (i) of this section and § 63.2460(c)(6).

(k) *Continuous parameter monitoring.* The provisions in paragraphs (k)(1) through (4) of this section apply in addition to the requirements for continuous parameter monitoring system (CPMS) in subpart SS of this part 63.

(1) You must record the results of each calibration check and all maintenance performed on the CPMS as specified in § 63.998(c)(1)(ii)(A).

(2) When subpart SS of this part 63 uses the term "a range" or "operating range" of a monitored parameter, it means an "operating limit" for a monitored parameter for the purposes of this subpart.

(3) As an alternative to measuring pH as specified in § 63.994(c)(1)(i), you may elect to continuously monitor the caustic strength of the scrubber effluent.

(4) As an alternative to the inlet and outlet temperature monitoring requirements for catalytic incinerators as specified in § 63.988(c)(2), you may elect to comply with the requirements specified in paragraphs (k)(4)(i) through (iii) of this section.

(i) Monitor the inlet temperature as specified in subpart SS of this part 63.

(ii) Check the activity level of the catalyst at least every 12 months and take any necessary corrective action, such as replacing the catalyst to ensure that the catalyst is performing as designed.

(iii) Maintain records of the annual checks of catalyst activity levels and the subsequent corrective actions.

(l) *Startup, shutdown, and malfunction.* Sections 63.152(f)(7)(ii) through (iv) and 63.998(b)(2)(iii) and (b)(6)(i)(A), which apply to the exclusion of monitoring data collected during periods of SSM from daily averages, do not apply for the purposes of this subpart.

(m) *Reporting.* (1) When §§ 63.2455 through 63.2490 reference other subparts in this part 63 that use the term "periodic report," it means "compliance report" for the purposes of this subpart. The compliance report must include the information specified in § 63.2520(e), as well as the information specified in referenced subparts.

(2) When there are conflicts between this subpart and referenced subparts for the due dates of reports required by this subpart, reports must be submitted according to the due dates presented in this subpart.

(3) Excused excursions, as defined in subparts G and SS of this part 63, are not allowed.

(n) The option in § 63.997(e)(2)(iv)(C) to demonstrate compliance with a percent reduction emission limit by measuring TOC is not allowed.

(o) You may not use a flare to control halogenated vent streams or hydrogen halide and halogen HAP emissions.

(p) Opening a safety device, as defined in § 63.2550, is allowed at any time conditions require it to avoid unsafe conditions.

(q) If an emission stream contains energetics or organic peroxides that, for safety reasons, cannot meet an applicable emission limit specified in Tables 1 through 7 to this subpart, then you must submit documentation in your precompliance report explaining why an undue safety hazard would be created if the air emission controls were installed, and you must describe the procedures that you will implement to minimize HAP emissions from these vent streams.

(r) *Surge control vessels and bottoms receivers.* For each surge control vessel or bottoms receiver that meets the capacity and vapor pressure thresholds for a Group 1 storage tank, you must meet emission limits and work practice standards specified in Table 4 to this subpart.

(s) For the purposes of determining Group status for continuous process vents, batch process vents, and storage tanks in §§ 63.2455, 63.2460, and 63.2470, hydrazine is to be considered an organic HAP.

§ 63.2455 What requirements must I meet for continuous process vents?

(a) You must meet each emission limit in Table 1 to this subpart that applies to your continuous process vents, and you must meet each applicable requirement specified in paragraphs (b) through (c) of this section.

(b) For each continuous process vent, you must either designate the vent as a Group 1 continuous process vent or determine the total resource effectiveness (TRE) index value as specified in § 63.115(d), except as specified in paragraphs (b)(1) through (3) of this section.

(1) You are not required to determine the Group status or the TRE index value for any continuous process vent that is combined with Group 1 batch process vents before a control device or recovery device because the requirements of § 63.2450(c)(2)(i) apply to the combined stream.

(2) When a TRE index value of 4.0 is referred to in § 63.115(d), TRE index values of 5.0 for existing affected sources and 8.0 for new and reconstructed affected sources apply for the purposes of this subpart.

(3) When § 63.115(d) refers to "emission reductions specified in § 63.113(a)," the reductions specified in Table 1 to this subpart apply for the purposes of this subpart.

(c) If you use a recovery device to maintain the TRE above a specified threshold, you must meet the requirements of § 63.982(e) and the requirements referenced therein, except as specified in § 63.2450 and paragraph (c)(1) of this section.

(1) When § 63.993 uses the phrase "the TRE index value is between the level specified in a referencing subpart and 4.0," the phrase "the TRE index value is >1.9 but ≤5.0" applies for an existing affected source, and the phrase "the TRE index value is >5.0 but ≤8.0" applies for a new and reconstructed affected source, for the purposes of this subpart.

(2) [Reserved]

§ 63.2460 What requirements must I meet for batch process vents?

(a) You must meet each emission limit in Table 2 to this subpart that applies to you, and you must meet each applicable requirement specified in paragraphs (b) and (c) of this section.

(b) *Group status.* If a process has batch process vents, as defined in § 63.2550, you must determine the group status of the batch process vents by determining and summing the uncontrolled organic HAP emissions from each of the batch process vents within the process using the procedures specified in § 63.1257(d)(2)(i) and (ii), except as specified in paragraphs (b)(1) through (4) of this section.

(1) To calculate emissions caused by the heating of a vessel to a temperature lower than the boiling point, you must use the procedures in § 63.1257(d)(2)(i)(C)(*3*).

(2) To calculate emissions from depressurization, you must use the procedures in § 63.1257(d)(2)(i)(D)(*10*).

(3) To calculate emissions from vacuum systems for the purposes of this subpart, the receiving vessel is part of the vacuum system, and terms used in Equation 33 to 40 CFR part 63, subpart GGG, are defined as follows:

P_{system} = absolute pressure of receiving vessel;

P_i = partial pressure of the HAP at the receiver temperature;

P_j = partial pressure of condensable (including HAP) at the receiver temperature;

MW_i = molecular weight of the individual HAP in the emission stream, with HAP partial pressures calculated at the temperature of the receiver.

(4) You may elect to designate the batch process vents within a process as Group 1 and not calculate uncontrolled emissions under either of the situations described in paragraph (b)(4)(i) or (ii) of this section.

(i) If you comply with the alternative standard specified in § 63.2505.

(ii) If all Group 1 batch process vents within a process are controlled; you conduct the performance test under hypothetical worst case conditions, as defined in § 63.1257(b)(8)(i)(B); and the emission profile is based on capture and control system limitations as specified in § 63.1257(b)(8)(ii)(C).

(c) Exceptions to the requirements in subpart SS of this part 63 are specified in paragraphs (c)(1) through (7) of this section.

(1) *Process condensers.* Process condensers, as defined in § 63.1251, are not considered to be control devices for batch process vents.

(2) *Initial compliance.* (i) To demonstrate initial compliance with a percent reduction emission limit in Table 2 to this subpart, you must compare the sums of the controlled and uncontrolled emissions for the applicable Group 1 batch process vents within the process and show that the specified reduction is met.

(ii) When you conduct a performance test or design evaluation for a control device used to control emissions from batch process vents, you must establish emission profiles and conduct the test under worst-case conditions according to § 63.1257(b)(8) instead of under normal operating conditions as specified in § 63.7(e)(1). The requirements in § 63.997(e)(1)(i) and (iii) also do not apply for performance tests conducted to determine compliance with the emission limits for batch process vents. References in § 63.997(b)(1) to "methods specified in § 63.997(e)" include the methods specified in § 63.1257(b)(8).

(iii) As an alternative to conducting a performance test or design evaluation for a condenser, you may determine controlled emissions using the procedures specified in § 63.1257(d)(3)(i)(B).

(iv) When § 63.1257(d)(3)(i)(B)(*7*) specifies that condenser-controlled emissions from an air dryer must be calculated using Equation 11 of 40 CFR part 63, subpart GGG, with "V equal to the air flow rate," it means "V equal to the dryer outlet gas flow rate," for the purposes of this subpart. Alternatively, you may use Equation 12 of 40 CFR part 63, subpart GGG, with V equal to the dryer inlet air flow rate. Account for time as appropriate in either equation.

(v) You must demonstrate that each process condenser is properly operated according to the procedures specified in § 63.1257(d)(2)(i)(C)(*4*)(*ii*) and (d)(3)(iii)(B). The reference in § 63.1257(d)(3)(iii)(B) to the alternative standard in § 63.1254(c) means § 63.2505 for the purposes of this subpart. As an alternative to measuring the exhaust gas temperature, as required by § 63.1257(d)(3)(iii)(B), you may elect to measure the liquid temperature in the receiver.

(vi) You must conduct a subsequent performance test or compliance demonstration equivalent to an initial compliance demonstration within 180 days of a change in the worst-case conditions.

(3) *Establishing operating limits.* You must establish operating limits under the conditions required for your initial compliance demonstration, except you may elect to establish operating limit(s) for conditions other than those under which a performance test was conducted as specified in paragraph (c)(3)(i) of this section and, if applicable, paragraph (c)(3)(ii) of this section.

(i) The operating limits may be based on the results of the performance test and supplementary information such as engineering assessments and manufacturer's recommendations. These

limits may be established for conditions as unique as individual emission episodes for a batch process. You must provide rationale in the precompliance report for the specific level for each operating limit, including any data and calculations used to develop the limit and a description of why the limit indicates proper operation of the control device. The procedures provided in this paragraph (c)(3)(i) have not been approved by the Administrator and determination of the operating limit using these procedures is subject to review and approval by the Administrator.

(ii) If you elect to establish separate monitoring levels for different emission episodes within a batch process, you must maintain records in your daily schedule or log of processes indicating each point at which you change from one operating limit to another, even if the duration of the monitoring for an operating limit is less than 15 minutes. You must maintain a daily schedule or log of processes according to § 63.2525(c).

(4) *Averaging periods.* As an alternative to the requirement for daily averages in § 63.998(b)(3), you may determine averages for operating blocks. An operating block is a period of time that is equal to the time from the beginning to end of batch process operations within a process.

(5) *Periodic verification.* For a control device with total inlet HAP emissions less than 1 tpy, you must establish an operating limit(s) for a parameter(s) that you will measure and record at least once per averaging period (*i.e.*, daily or block) to verify that the control device is operating properly. You may elect to measure the same parameter(s) that is required for control devices that control inlet HAP emissions equal to or greater than 1 tpy. If the parameter will not be measured continuously, you must request approval of your proposed procedure in the precompliance report. You must identify the operating limit(s) and the measurement frequency, and you must provide rationale to support how these measurements demonstrate the control device is operating properly.

(6) *Outlet concentration correction for supplemental gases.* If you use a control device other than a combustion device to comply with a TOC, organic HAP, or hydrogen halide and halogen HAP outlet concentration emission limit for batch process vents, you must correct the actual concentration for supplemental gases using Equation 1 of this section; you may use process knowledge and representative operating data to determine the fraction of the total flow due to supplemental gas.

$$C_a = C_m\left(\frac{Q_s + Q_a}{Q_a}\right) \qquad \text{(Eq. 1)}$$

Where:

C_a = corrected outlet TOC, organic HAP, or hydrogen halide and halogen HAP concentration, dry basis, ppmv;

C_m = actual TOC, organic HAP, or hydrogen halide and halogen HAP concentration measured at control device outlet, dry basis, ppmv;

Q_a = total volumetric flowrate of all gas streams vented to the control device, except supplemental gases;

Q_s = total volumetric flowrate of supplemental gases.

(7) If flow to a control device could be intermittent, you must install, calibrate, and operate a flow indicator at the inlet or outlet of the control device to identify periods of no flow. Periods of no flow may not be used in daily or block averages, and it may not be used in fulfilling a minimum data availability requirement.

§ 63.2465 What requirements must I meet for process vents that emit hydrogen halide and halogen HAP or PM HAP?

(a) You must meet each emission limit in Table 3 to this subpart that applies to you, and you must meet each applicable requirement in paragraphs (b) through (d) of this section.

(b) If any process vents within a process emit hydrogen halide and halogen HAP, you must determine and sum the uncontrolled hydrogen halide and halogen HAP emissions from each of the process vents within the process using the procedures specified in § 63.1257(d)(2)(i) and (ii).

(c) If collective uncontrolled hydrogen halide and halogen HAP emissions from the process vents within a process are greater than or equal to 1,000 pounds per year (lb/yr), you must comply with § 63.994 and the requirements referenced therein, except as specified in paragraphs (c)(1) through (3) of this section.

(1) When § 63.994(b)(1) requires a performance test, you may elect to conduct a design evaluation in accordance with § 63.1257(a)(1).

(2) When § 63.994(b)(1) refers to "a combustion device followed by a halogen scrubber or other halogen reduction device," it means any combination of control devices used to meet the emission limits specified in Table 3 to this subpart.

(3) Section 63.994(b)(2) does not apply for the purposes of this section.

(d) To demonstrate compliance with the particulate matter (PM) HAP emission limit for new sources in Table 3 to this subpart, you must comply with paragraphs (d)(1) and (2) of this section.

(1) Use Method 5 of appendix A of 40 CFR part 60 to determine the concentration of PM HAP at the inlet and outlet of a control device.

(2) Comply with the monitoring requirements specified in § 63.1366(b)(1)(xi) for each fabric filter used to control PM HAP emissions.

§ 63.2470 What requirements must I meet for storage tanks?

(a) You must meet each emission limit in Table 4 to this subpart that applies to your storage tanks, and you must meet each applicable requirement specified in paragraphs (b) through (e) of this section.

(b) If you reduce organic HAP emissions by venting emissions to a fuel gas system or process, you must meet the requirements of § 63.982(d) and the requirements referenced therein.

(c) *Exceptions to subparts SS and WW of this part 63.*

(1) If you conduct a performance test or design evaluation for a control device used to control emissions only from storage tanks, you must establish operating limits, conduct monitoring, and keep records using the same procedures as required in subpart SS of this part 63 for control devices used to reduce emissions from process vents instead of the procedures specified in §§ 63.985(c), 63.998(d)(2)(i), and 63.999(b)(2).

(2) When the term "storage vessel" is used in subparts SS and WW of this part 63, the term "storage tank," as defined in § 63.2550 applies for the purposes of this subpart.

(d) *Planned routine maintenance.* The emission limits in Table 4 to this subpart for control devices used to control emissions from storage tanks do not apply during periods of planned routine maintenance. Periods of planned routine maintenance of each control device, during which the control device does not meet the emission limit specified in Table 4 to this subpart, must not exceed 240 hours per year (hr/yr). You may submit an application to the Administrator requesting an extension of this time limit to a total of 360 hr/yr. The application must explain why the extension is needed, it must indicate that no material will be added to the storage tank between the time the 240-hr limit is exceeded and the control device is again operational, and it must be submitted at least 60 days before the 240-hr limit will be exceeded.

(e) *Vapor balancing alternative.* As an alternative to the emission limits specified in Table 4 to this subpart, you may elect to implement vapor balancing in accordance with § 63.1253(f), except

as specified in paragraphs (e)(1) through (3) of this section.

(1) When § 63.1253(f)(6)(i) refers to a 90 percent reduction, 95 percent applies for the purposes of this subpart.

(2) To comply with § 63.1253(f)(6)(i), the owner or operator of an offsite cleaning and reloading facility must comply with §§ 63.2445 through 63.2550 instead of complying with § 63.1253(f)(7)(ii).

(3) You may elect to set a pressure relief device to a value less than the 2.5 pounds per square inch gage pressure (psig) required in § 63.1253(f)(5) if you provide rationale in your notification of compliance status report explaining why the alternative value is sufficient to prevent breathing losses at all times.

§ 63.2475 What requirements must I meet for transfer racks?

(a) You must comply with each emission limit and work practice standard in Table 5 to this subpart that applies to your transfer racks, and you must meet each applicable requirement in paragraphs (b) and (c) of this section.

(b) When the term "high throughput transfer rack" is used in subpart SS of this part 63, the term "Group 1 transfer rack," as defined in § 63.2550, applies for the purposes of this subpart.

(c) If you reduce organic HAP emissions by venting emissions to a fuel gas system or process, you must meet the requirements of § 63.982(d) and the requirements referenced therein.

§ 63.2480 What requirements must I meet for equipment leaks?

(a) You must meet each requirement in Table 6 to this subpart that applies to your equipment leaks, except as specified in paragraphs (b) and (c) of this section.

(b) The requirements for pressure testing in § 63.1036(b) may be applied to all processes, not just batch processes.

(c) For the purposes of this subpart, pressure testing for leaks in accordance with § 63.1036(b) is not required after reconfiguration of an equipment train if flexible hose connections are the only disturbed equipment.

§ 63.2485 What requirements must I meet for wastewater streams and liquid streams in open systems within an MCPU?

(a) You must meet each requirement in Table 7 to this subpart that applies to your wastewater streams and liquid streams in open systems within an MCPU, except as specified in paragraphs (b) through (l) of this section.

(b) *Wastewater HAP.* Where § 63.105 and §§ 63.132 through 63.148 refer to compounds in Table 9 of subpart G of this part 63, the compounds in Tables 8 and 9 to this subpart apply for the purposes of this subpart.

(c) *Group 1 wastewater.* Section 63.132(c)(1) (i) and (ii) do not apply. For the purposes of this subpart, a process wastewater stream is Group 1 for compounds in Tables 8 and 9 to this subpart if any of the conditions specified in paragraphs (c) (1) through (3) of this section are met.

(1) The total annual average concentration of compounds in Table 8 to this subpart is greater than 50 ppmw, and the combined total annual average concentration of compounds in Tables 8 and 9 to this subpart is greater than or equal to 10,000 ppmw at any flowrate.

(2) The total annual average concentration of compounds Table 8 to this subpart is greater 50 ppmw, the combined total annual average concentration of compounds in Tables 8 and 9 to this subpart is greater than or equal to 1,000 ppmw, and the annual average flowrate is greater than or equal to 1 l/min.

(3) The total annual average concentration of compounds in Table 8 to this subpart is less than or equal to 50 ppmw, the total annual average concentration of compounds in Table 9 to this subpart is greater than or equal to 30,000 ppmw at an existing source or greater than or equal to 4,500 ppmw at a new source, and the total annual load of compounds in Table 9 to this subpart is greater than or equal to 1 tpy.

(d) *Wastewater tank requirements.* (1) When §§ 63.133 and 63.147 reference floating roof requirements in §§ 63.119 and 63.120, the corresponding requirements in subpart WW of this part 63 may be applied for the purposes of this subpart.

(2) When § 63.133 refers to Table 9 of subpart G of this part 63, the maximum true vapor pressure in the table shall be limited to the HAP listed in Tables 8 and 9 to this subpart.

(3) For the purposes of this subpart, the requirements of § 63.133(a)(2) are satisfied by operating and maintaining a fixed roof if you demonstrate that the total soluble and partially soluble HAP emissions from the wastewater tank are no more than 5 percent higher than the emissions would be if the contents of the wastewater tank were not heated, treated by an exothermic reaction, or sparged.

(4) The emission limits specified in §§ 63.133(b)(2) and 63.139 for control devices used to control emissions from wastewater tanks do not apply during periods of planned routine maintenance of the control device(s) of no more than 240 hr/yr. You may request an extension to a total of 360 hr/yr in accordance with the procedures specified in § 63.2470(d).

(e) *Individual drain systems.* The provisions of § 63.136(e)(3) apply except as specified in paragraph (e)(1) of this section.

(1) A sewer line connected to drains that are in compliance with § 63.136(e)(1) may be vented to the atmosphere, provided that the sewer line entrance to the first downstream junction box is water sealed and the sewer line vent pipe is designed as specified in § 63.136(e)(2)(ii)(A).

(2) [Reserved]

(f) *Closed-vent system requirements.* When § 63.148(k) refers to closed vent systems that are subject to the requirements of § 63.172, the requirements of either § 63.172 or § 63.1034 apply for the purposes of this subpart.

(g) *Halogenated vent stream requirements.* For each halogenated vent stream from a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream that is vented through a closed-vent system to a combustion device to reduce organic HAP emissions, you must meet the same emission limits as specified for batch process vents in item 2 of Table 2 to this subpart.

(h) *Alternative test methods.* (1) As an alternative to the test methods specified in § 63.144(b)(5)(i), you may use Method 8260 or 8270 as specified in § 63.1257(b)(10)(iii).

(2) As an alternative to using the methods specified in § 63.144(b)(5)(i), you may conduct wastewater analyses using Method 1666 or 1671 of 40 CFR part 136 and comply with the sampling protocol requirements specified in § 63.144(b)(5)(ii). The validation requirements specified in § 63.144(b)(5)(iii) do not apply if you use Method 1666 or 1671 of 40 CFR part 136.

(3) As an alternative to using Method 18 of 40 CFR part 60, as specified in §§ 63.139(c)(1)(ii) and 63.145(i)(2), you may elect to use Method 25A of 40 CFR part 60 as specified in § 63.997.

(i) *Offsite management and treatment option.* (1) If you ship wastewater to an offsite treatment facility that meets the requirements of § 63.138(h), you may elect to document in your notification of compliance status report that the wastewater will be treated as hazardous waste at a facility that meets the requirements of § 63.138(h) as an alternative to having the offsite facility submit the certification specified in § 63.132(g)(2).

(2) As an alternative to the management and treatment options specified in § 63.132(g)(2), any affected

wastewater stream (or residual removed from an affected wastewater stream) with a total annual average concentration of compounds in Table 8 to this subpart less than 50 ppmw may be transferred offsite in accordance with paragraphs (i)(2) (i) and (ii) of this section.

(i) The transferee (or you) must demonstrate that less than 5 percent of the HAP in Table 9 to this subpart is emitted from the waste management units up to the activated sludge unit.

(ii) The transferee must treat the wastewater stream or residual in a biological treatment unit in accordance with §§ 63.138 and 63.145 and the requirements referenced therein.

(j) You must determine the annual average concentration and annual average flowrate for wastewater streams for each MCPU. The procedures for flexible operation units specified in § 63.144 (b) and (c) do not apply for the purposes of this subpart.

(k) The requirement to correct outlet concentrations from combustion devices to 3 percent oxygen in §§ 63.139(c)(1)(ii) and 63.146(i)(6) applies only if supplemental gases are combined with a vent stream from a Group 1 wastewater stream. If emissions are controlled with a vapor recovery system as specified in § 63.139(c)(2), you must correct for supplemental gases as specified in § 63.2460(c)(6).

(l) *Requirements for liquid streams in open systems.* (1) References in § 63.149 to § 63.100(b) mean § 63.2435(b) for the purposes of this subpart.

(2) When § 63.149(e) refers to 40 CFR 63.100(l) (1) or (2), § 63.2445(a) applies for the purposes of this subpart.

(3) When § 63.149 uses the term "chemical manufacturing process unit," the term "MCPU" applies for the purposes of this subpart.

(4) When § 63.149(e)(1) refers to characteristics of water that contain compounds in Table 9 to 40 CFR part 63, subpart G, the characteristics specified in paragraphs (c) (1) through (3) of this section apply for the purposes of this subpart.

(5) When § 63.149(e)(2) refers to characteristics of water that contain compounds in Table 9 to 40 CFR part 63, subpart G, the characteristics specified in paragraph (c)(2) of this section apply for the purposes of this subpart.

§ 63.2490 What requirements must I meet for heat exchange systems?

(a) You must comply with each requirement in Table 10 to this subpart that applies to your heat exchange systems, except as specified in paragraphs (b) and (c) of this section.

(b) The phrase "a chemical manufacturing process unit meeting the conditions of § 63.100 (b)(1) through (b)(3) of this section" in § 63.104(a) means "an MCPU meeting the conditions of § 63.2435" for the purposes of this subpart.

(c) The reference to § 63.100(c) in § 63.104(a) does not apply for the purposes of this subpart.

Alternative Means of Compliance

§ 63.2495 How do I comply with the pollution prevention standard?

(a) You may elect to comply with the pollution prevention alternative requirements specified in paragraphs (a) (1) and (2) of this section in lieu of the emission limitations and work practice standards contained in Tables 1 through 7 to this subpart for any MCPU for which initial startup occurred before April 4, 2002.

(1) You must reduce the production-indexed HAP consumption factor (HAP factor) by at least 65 percent from a 3-year average baseline beginning no earlier than the 1994 through 1996 calendar years. For any reduction in the HAP factor that you achieve by reducing HAP that are also volatile organic compounds (VOC), you must demonstrate an equivalent reduction in the production-indexed VOC consumption factor (VOC factor) on a mass basis. For any reduction in the HAP factor that you achieve by reducing a HAP that is not a VOC, you may not increase the VOC factor.

(2) Any MCPU for which you seek to comply by using the pollution prevention alternative must begin with the same starting material(s) and end with the same product(s). You may not comply by eliminating any steps of a process by transferring the step offsite (to another manufacturing location). You may also not merge a solvent recovery step conducted offsite to onsite and as part of an existing process as a method of reducing consumption.

(3) You may comply with the requirements of paragraph (a)(1) of this section for a series of processes, including situations where multiple processes are merged, if you demonstrate to the satisfaction of the Administrator that the multiple processes were merged after the baseline period into an existing process or processes.

(b) *Exclusions.* (1) You must comply with the emission limitations and work practice standards contained in Tables 1 through 7 to this subpart for all HAP that are generated in the MCPU and that are not included in consumption, as defined in § 63.2550. Hydrogen halides that are generated as a result of combustion control must be controlled according to the requirements of § 63.994 and the requirements referenced therein.

(2) You may not merge nondedicated formulation or nondedicated solvent recovery processes with any other processes.

(c) *Initial compliance procedures.* To demonstrate initial compliance with paragraph (a) of this section, you must prepare a demonstration summary in accordance with paragraph (c) (1) of this section and calculate baseline and target annual HAP and VOC factors in accordance with paragraphs (c) (2) and (3) of this section.

(1) *Demonstration plan.* You must prepare a pollution prevention demonstration plan that contains, at a minimum, the information in paragraphs (c)(1) (i) through (iii) of this section for each MCPU for which you comply with paragraph (a) of this section.

(i) Descriptions of the methodologies and forms used to measure and record consumption of HAP and VOC compounds.

(ii) Descriptions of the methodologies and forms used to measure and record production of the product(s).

(iii) Supporting documentation for the descriptions provided in accordance with paragraphs (c)(1) (i) and (ii) of this section including, but not limited to, samples of operator log sheets and daily, monthly, and/or annual inventories of materials and products. You must describe how this documentation will be used to calculate the annual factors required in paragraph (d) of this section.

(2) *Baseline factors.* You must calculate baseline HAP and VOC factors by dividing the consumption of total HAP and total VOC by the production rate, per process, for the first 3-year period in which the process was operational, beginning no earlier than the period consisting of the 1994 through 1996 calendar years.

(3) *Target annual factors.* You must calculate target annual HAP and VOC factors. The target annual HAP factor must be equal to 35 percent of the baseline HAP factor. The target annual VOC factor must be lower than the baseline VOC factor by an amount equivalent to the reduction in any HAP that is also a VOC, on a mass basis. The target annual VOC factor may be the same as the baseline VOC factor if the only HAP you reduce is not a VOC.

(d) *Continuous compliance requirements.* You must calculate annual rolling average values of the HAP and VOC factors (annual factors) in accordance with the procedures

specified in paragraphs (d) (1) through (3) of this section. To show continuous compliance, the annual factors must be equal to or less than the target annual factors calculated according to paragraph (c)(3) of this section.

(1) To calculate the annual factors, you must divide the consumption of both total HAP and total VOC by the production rate, per process, for 12-month periods at the frequency specified in either paragraph (d) (2) or (3) of this section, as applicable.

(2) For continuous processes, you must calculate the annual factors every 30 days for the 12-month period preceding the 30th day (i.e., annual rolling average calculated every 30 days). A process with both batch and continuous operations is considered a continuous process for the purposes of this section.

(3) For batch processes, you must calculate the annual factors every 10 batches for the 12-month period preceding the 10th batch (*i.e.*, annual rolling average calculated every 10 batches), except as specified in paragraphs (d)(3) (i) and (ii) of this section.

(i) If you produce more than 10 batches during a month, you must calculate the annual factors at least once during that month.

(ii) If you produce less than 10 batches in a 12-month period, you must calculate the annual factors for the number of batches in the 12-month period since the previous calculations.

(e) *Records.* You must keep records of HAP and VOC consumption, production, and the rolling annual HAP and VOC factors for each MCPU for which you are complying with paragraph (a) of this section.

(f) *Reporting.* (1) You must include the pollution prevention demonstration plan in the precompliance report required by § 63.2520(c).

(2) You must identify all days when the annual factors were above the target factors in the compliance reports.

§ 63.2500 How do I comply with emissions averaging?

(a) For an existing source, you may elect to comply with the percent reduction emission limitations in Tables 1, 2, 4, 5, and 7 to this subpart by complying with the emissions averaging provisions specified in § 63.150, except as specified in paragraphs (b) through (f) of this section.

(b) The batch process vents in an MCPU collectively are considered one individual emission point for the purposes of emissions averaging, except that only individual batch process vents must be excluded to meet the requirements of § 63.150(d)(5).

(c) References in § 63.150 to §§ 63.112 through 63.130 mean the corresponding requirements in §§ 63.2450 through 63.2490, including applicable monitoring, recordkeeping, and reporting.

(d) References to "periodic reports" in § 63.150 mean "compliance report" for the purposes of this subpart.

(e) For batch process vents, estimate uncontrolled emissions for a standard batch using the procedures in § 63.1257(d)(2)(i) and (ii) instead of the procedures in § 63.150(g)(2). Multiply the calculated emissions per batch by the number of batches per month when calculating the monthly emissions for use in calculating debits and credits.

(f) References to "storage vessels" in § 63.150 mean "storage tank" as defined in § 63.2550 for the purposes of this subpart.

§ 63.2505 How do I comply with the alternative standard?

As an alternative to complying with the emission limits and work practice standards for process vents and storage tanks in Tables 1 through 4 to this subpart and the requirements in §§ 63.2455 through 63.2470, you may comply with the emission limits in paragraph (a) of this section and demonstrate compliance in accordance with the requirements in paragraph (b) of this section.

(a) *Emission limits and work practice standards.* (1) You must route vent streams through a closed-vent system to a control device that reduces HAP emissions as specified in either paragraph (a)(1)(i) or (ii) of this section.

(i) If you use a combustion control device, it must reduce HAP emissions as specified in paragraphs (a)(1)(i)(A), (B), and (C) of this section.

(A) To an outlet TOC concentration of 20 parts per million by volume (ppmv) or less.

(B) To an outlet concentration of hydrogen halide and halogen HAP of 20 ppmv or less.

(C) As an alternative to paragraph (a)(1)(i)(B) of this section, if you control halogenated vent streams emitted from a combustion device followed by a scrubber, reduce the hydrogen halide and halogen HAP generated in the combustion device by greater than or equal to 95 percent by weight in the scrubber.

(ii) If you use a noncombustion control device(s), it must reduce HAP emissions to an outlet total organic HAP concentration of 50 ppmv or less, and an outlet concentration of hydrogen halide and halogen HAP of 50 ppmv or less.

(2) Any Group 1 process vents within a process that are not controlled according to this alternative standard must be controlled according to the emission limits in Tables 1 through 3 to this subpart.

(b) *Compliance requirements.* To demonstrate compliance with paragraph (a) of this section, you must meet the requirements of § 63.1258(b)(5)(i) beginning no later than the initial compliance date specified in § 63.2445, except as specified in paragraphs (b)(1) through (7) of this section.

(1) You must comply with the requirements in § 63.983 and the requirements referenced therein for closed-vent systems.

(2) When § 63.1258(b)(5)(i) refers to §§ 63.1253(d) and 63.1254(c), the requirements in paragraph (a) of this section apply for the purposes of this subpart.

(3) You must submit the results of any determination of the target analytes or predominant HAP in the notification of compliance status report.

(4) When § 63.1258(b)(5)(i)(B) refers to "HCl," it means "total hydrogen halide and halogen HAP" for the purposes of this subpart.

(5) If you elect to comply with the requirement to reduce hydrogen halide and halogen HAP by greater than or equal to 95 percent by weight in paragraph (a)(1)(i)(C) of this section, you must meet the requirements in paragraphs (b)(5)(i) and (ii) of this section.

(i) Demonstrate initial compliance with the 95 percent reduction by conducting a performance test and setting a site-specific operating limit(s) for the scrubber in accordance with § 63.994 and the requirements referenced therein. You must submit the results of the initial compliance demonstration in the notification of compliance status report.

(ii) Install, operate, and maintain CPMS for the scrubber as specified in § 63.2450(k), instead of as specified in § 63.1258(b)(5)(i)(C).

(6) If flow to the scrubber could be intermittent, you must install, calibrate, and operate a flow indicator as specified in § 63.2460(c)(7).

(7) Use the operating day as the averaging period for CEMS data and scrubber parameter monitoring data.

Notification, Reports, and Records

§ 63.2515 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5),

63.7(b) and (c), 63.8(e), (f)(4) and (6), and 63.9(b) through (h) that apply to you by the dates specified.

(b) *Initial notification.* As specified in § 63.9(b)(2), if you startup your affected source before November 10, 2003, you must submit an initial notification not later than 120 calendar days after November 10, 2003.

(2) As specified in § 63.9(b)(3), if you startup your new affected source on or after November 10, 2003, you must submit an initial notification not later than 120 calendar days after you become subject to this subpart.

(c) *Notification of performance test.* If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1). For any performance test required as part of the initial compliance procedures for batch process vents in Table 2 to this subpart, you must also submit the test plan required by § 63.7(c) and the emission profile with the notification of the performance test.

§ 63.2520 What reports must I submit and when?

(a) You must submit each report in Table 11 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 11 to this subpart and according to paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.2445 and ending on June 30 or December 31, whichever date is the first date following the end of the first 6 months after the compliance date that is specified for your affected source in § 63.2445.

(2) The first compliance report must be postmarked or delivered no later than August 31 or February 28, whichever date is the first date following the end of the first reporting period specified in paragraph (b)(1) of this section.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than August 31 or February 28, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) *Precompliance report.* You must submit a precompliance report to request approval for any of the items in paragraphs (c)(1) through (7) of this section. We will either approve or disapprove the report within 90 days after we receive it. If we disapprove the report, you must still be in compliance with the emission limitations and work practice standards in this subpart by the compliance date. To change any of the information submitted in the report, you must notify us 60 days before the planned change is to be implemented.

(1) Requests for approval to set operating limits for parameters other than those specified in §§ 63.2455 through 63.2485 and referenced therein. Alternatively, you may make these requests according to § 63.8(f).

(2) Descriptions of daily or per batch demonstrations to verify that control devices subject to § 63.2460(c)(5) are operating as designed.

(3) A description of the test conditions, data, calculations, and other information used to establish operating limits according to § 63.2460(c)(3).

(4) Data and rationale used to support an engineering assessment to calculate uncontrolled emissions in accordance with § 63.1257(d)(2)(ii).

(5) The pollution prevention demonstration plan required in § 63.2495(c)(1), if you are complying with the pollution prevention alternative.

(6) Documentation of the practices that you will implement to minimize HAP emissions from streams that contain energetics and organic peroxides, and rationale for why meeting the emission limit specified in Tables 1 through 7 to this subpart would create an undue safety hazard.

(7) For fabric filters that are monitored with bag leak detectors, an operation and maintenance plan that describes proper operation and maintenance procedures, and a corrective action plan that describes corrective actions to be taken, and the timing of those actions, when the PM concentration exceeds the set point and activates the alarm.

(d) *Notification of compliance status report.* You must submit a notification of compliance status report according to the schedule in paragraph (d)(1) of this section, and the notification of compliance status report must contain the information specified in paragraph (d)(2) of this section.

(1) You must submit the notification of compliance status report no later than 150 days after the applicable compliance date specified in § 63.2445.

(2) The notification of compliance status report must include the information in paragraphs (d)(2)(i) through (ix) of this section.

(i) The results of any applicability determinations, emission calculations, or analyses used to identify and quantify HAP emissions from the affected source.

(ii) The results of emissions profiles, performance tests, engineering analyses, design evaluations, flare compliance assessments, inspections and repairs, and calculations used to demonstrate initial compliance according to §§ 63.2455 through 63.2485. For performance tests, results must include descriptions of sampling and analysis procedures and quality assurance procedures.

(iii) Descriptions of monitoring devices, monitoring frequencies, and the operating limits established during the initial compliance demonstrations, including data and calculations to support the levels you establish.

(iv) All operating scenarios.

(v) Descriptions of worst-case operating and/or testing conditions for control devices.

(vi) Identification of parts of the affected source subject to overlapping requirements described in § 63.2535 and the authority under which you will comply.

(vii) The information specified in § 63.1039(a)(1) through (3) for each process subject to the work practice standards for equipment leaks in Table 6 to this subpart.

(viii) Identify storage tanks for which you are complying with the vapor balancing alternative in § 63.2470(g).

(ix) Records as specified in § 63.2535(i)(1) through (3) of process units used to create a PUG and calculations of the initial primary product of the PUG.

(e) *Compliance report.* The compliance report must contain the information specified in paragraphs (e)(1) through (10) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) For each SSM during which excess emissions occur, the compliance report must include records that the procedures specified in your startup, shutdown, and malfunction plan (SSMP) were followed or documentation of actions taken that are not consistent with the SSMP, and include a brief description of each malfunction.

(5) The compliance report must contain the information on deviations, as defined in § 63.2550, according to paragraphs (e)(5)(i), (ii), and (iii) of this section.

(i) If there are no deviations from any emission limit, operating limit or work practice standard specified in this subpart, include a statement that there were no deviations from the emission limits, operating limits, or work practice standards during the reporting period.

(ii) For each deviation from an emission limit, operating limit, and work practice standard that occurs at an affected source where you are not using a continuous monitoring system (CMS) to comply with the emission limit or work practice standard in this subpart, you must include the information in paragraphs (e)(5)(ii)(A) through (C) of this section. This includes periods of SSM.

(A) The total operating time of the affected source during the reporting period.

(B) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(C) Operating logs for the day(s) during which the deviation occurred, except operating logs are not required for deviations of the work practice standards for equipment leaks.

(iii) For each deviation from an emission limit or operating limit occurring at an affected source where you are using a CMS to comply with an emission limit in this subpart, you must include the information in paragraphs (e)(5)(iii)(A) through (L) of this section. This includes periods of SSM.

(A) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(B) The date, time, and duration that each CEMS was out-of-control, including the information in § 63.8(c)(8).

(C) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(D) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total operating time of the affected source during that reporting period.

(E) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(F) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percent of the total operating time of the affected source during that reporting period.

(G) An identification of each HAP that is known to be in the emission stream.

(H) A brief description of the process units.

(I) A brief description of the CMS.

(J) The date of the latest CMS certification or audit.

(K) Operating logs for each day(s) during which the deviation occurred.

(L) The operating day or operating block average values of monitored parameters for each day(s) during which the deviation occurred.

(6) If you use a CEMS, and there were no periods during which it was out-of-control as specified in § 63.8(c)(7), include a statement that there were no periods during which the CEMS was out-of-control during the reporting period.

(7) Include each new operating scenario which has been operated since the time period covered by the last compliance report and has not been submitted in the notification of compliance status report or a previous compliance report. For each new operating scenario, you must provide verification that the operating conditions for any associated control or treatment device have not been exceeded and that any required calculations and engineering analyses have been performed. For the purposes of this paragraph, a revised operating scenario for an existing process is considered to be a new operating scenario.

(8) Records of process units added to a PUG as specified in § 63.2525(i)(4) and records of primary product redeterminations as specified in § 63.2525(i)(5).

(9) Applicable records and information for periodic reports as specified in referenced subparts F, G, SS, UU, WW, and GGG of this part.

(10) *Notification of process change.* (i) Except as specified in paragraph (e)(10)(ii) of this section, whenever you make a process change, or change any of the information submitted in the notification of compliance status report, that is not within the scope of an existing operating scenario, you must document the change in your compliance report. A process change does not include moving within a range of conditions identified in the standard batch. The notification must include all of the information in paragraphs (e)(10)(i)(A) through (C) of this section.

(A) A description of the process change.

(B) Revisions to any of the information reported in the original notification of compliance status report under paragraph (d) of this section.

(C) Information required by the notification of compliance status report under paragraph (d) of this section for changes involving the addition of processes or equipment at the affected source.

(ii) You must submit a report 60 days before the scheduled implementation date of any of the changes identified in paragraph (e)(10)(ii)(A), (B), or (C) of this section.

(A) Any change to the information contained in the precompliance report.

(B) A change in the status of a control device from small to large.

(C) A change from Group 2 to Group 1 for any emission point.

§ 63.2525 What records must I keep?

You must keep the records specified in paragraphs (a) through (k) of this section.

(a) Each applicable record required by subpart A of this part 63 and in referenced subparts F, G, SS, UU, WW, and GGG of this part 63.

(b) Records of each operating scenario as specified in paragraphs (b)(1) through (8) of this section.

(1) A description of the process and the type of process equipment used.

(2) An identification of related process vents, including their associated emissions episodes if not complying with the alternative standard in § 63.2505; wastewater point of determination (POD); storage tanks; and transfer racks.

(3) The applicable control requirements of this subpart, including the level of required control, and for vents, the level of control for each vent.

(4) The control device or treatment process used, as applicable, including a description of operating and/or testing conditions for any associated control device.

(5) The process vents, wastewater POD, transfer racks, and storage tanks (including those from other processes) that are simultaneously routed to the control device or treatment process(s).

(6) The applicable monitoring requirements of this subpart and any parametric level that assures compliance for all emissions routed to the control device or treatment process.

(7) Calculations and engineering analyses required to demonstrate compliance.

(8) For reporting purposes, a change to any of these elements not previously reported, except for paragraph (b)(5) of this section, constitutes a new operating scenario.

(c) A schedule or log of operating scenarios updated each time a different operating scenario is put into operation.

(d) The information specified in paragraphs (d)(1) and (2) of this section for Group 1 batch process vents in compliance with a percent reduction emission limit in Table 2 to this subpart if some of the vents are controlled to less the percent reduction requirement.

(1) Records of whether each batch operated was considered a standard batch.

(2) The estimated uncontrolled and controlled emissions for each batch that is considered to be a nonstandard batch.

(e) The information specified in paragraphs (e)(1) through (4) of this section for each process with Group 2 batch process vents or uncontrolled hydrogen halide and halogen HAP emissions from the sum of all batch and continuous process vents less than 1,000 lb/yr. No record is required if you documented in the notification of compliance status report that the MCPU does not process, use, or produce HAP.

(1) A record of the day each batch was completed.

(2) A record of whether each batch operated was considered a standard batch.

(3) The estimated uncontrolled and controlled emissions for each batch that is considered to be a nonstandard batch.

(4) Records of the daily 365-day rolling summations of emissions, or alternative records that correlate to the emissions (*e.g.*, number of batches), calculated no less frequently than monthly.

(f) A record of each time a safety device is opened to avoid unsafe conditions in accordance with § 63.2450(s).

(g) Records of the results of each CPMS calibration check and the maintenance performed, as specified in § 63.2450(k)(1).

(h) For each CEMS, you must keep records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(i) For each PUG, you must keep records specified in paragraphs (i)(1) through (5) of this section.

(1) Descriptions of the MCPU and other process units in the initial PUG required by § 63.2535(l)(1)(v).

(2) Rationale for including each MCPU and other process unit in the initial PUG (*i.e.*, identify the overlapping equipment between process units) required by § 63.2535(l)(1)(v).

(3) Calculations used to determine the primary product for the initial PUG required by § 63.2535(l)(2)(iv).

(4) Descriptions of process units added to the PUG after the creation date and rationale for including the additional process units in the PUG as required by § 63.2535(l)(1)(v).

(5) The calculation of each primary product redetermination required by § 63.2535(l)(2)(iv).

(j) In the SSMP required by § 63.6(e)(3), you are not required to include Group 2 emission points, unless those emission points are used in an emissions average. For equipment leaks, the SSMP requirement is limited to control devices and is optional for other equipment.

(k) For each bag leak detector used to monitor PM HAP emissions from a fabric filter, maintain records of any bag leak detection alarm, including the date and time, with a brief explanation of the cause of the alarm and the corrective action taken.

Other Requirements and Information

§ 63.2535 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

For any equipment, emission stream, or wastewater stream subject to the provisions of both this subpart and another rule, you may elect to comply only with the provisions as specified in paragraphs (a) through (l) of this section. You also must identify the subject equipment, emission stream, or wastewater stream, and the provisions with which you will comply, in your notification of compliance status report required by § 63.2520(d).

(a) *Compliance with other subparts of this part 63.* If you have an MCPU that includes a batch process vent that also is part of a CMPU as defined in subparts F and G of this part 63, you must comply with the emission limits; operating limits; work practice standards; and the compliance, monitoring, reporting and recordkeeping requirements for batch process vents in this subpart, and you must continue to comply with the requirements in subparts F, G, and H of this part 63 that are applicable to the CMPU and associated equipment.

(b) *Compliance with 40 CFR parts 264 and 265, subparts AA, BB, and/or CC.* (1) After the compliance dates specified in § 63.2445, if a control device that you use to comply with this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart AA, BB, or CC; or the monitoring and recordkeeping requirements in 40 CFR part 265, subpart AA, BB, or CC; and you comply with the periodic reporting requirements under 40 CFR part 264, subpart AA, BB, or CC that would apply to the device if your facility had final-permitted status, you may elect to comply either with the monitoring, recordkeeping, and reporting requirements of this subpart; or with the monitoring and recordkeeping requirements in 40 CFR part 264 or 265 and the reporting requirements in 40 CFR part 264, as described in this paragraph (b)(1), which constitute compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. If you elect to comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, you must report the information described in § 63.2520(e).

(2) After the compliance dates specified in § 63.2445, if you have an affected source with equipment that is also subject to 40 CFR part 264, subpart BB, or to 40 CFR part 265, subpart BB, then compliance with the recordkeeping and reporting requirements of 40 CFR parts 264 and/or 265 may be used to comply with the recordkeeping and reporting requirements of this subpart, to the extent that the requirements of 40 CFR parts 264 and/or 265 duplicate the requirements of this subpart.

(c) *Compliance with 40 CFR part 60, subpart Kb and 40 CFR part 61, subpart Y.* After the compliance dates specified in § 63.2445, you are in compliance with the provisions of this subpart FFFF for any storage tank that is assigned to an MCPU and that is both controlled with a floating roof and in compliance with the provisions of either 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y. You are in compliance with this subpart FFFF if you have a storage tank with a fixed roof, closed-vent system, and control device in compliance with the provisions of either 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, except that you must comply with the monitoring, recordkeeping, and reporting requirements in this subpart FFFF. Alternatively, if a storage tank assigned to an MCPU is subject to control under 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, you may elect to

comply only with the requirements for Group 1 storage tanks in this subpart FFFF.

(d) *Compliance with subpart I, GGG, or MMM of this part 63.* After the compliance dates specified in § 63.2445, if you have an affected source with equipment subject to subpart I, GGG, or MMM of this part 63, you may elect to comply with the provisions of subpart H, GGG, or MMM of this part 63, respectively, for all such equipment.

(e) *Compliance with subpart GGG of this part 63 for wastewater.* After the compliance dates specified in § 63.2445, if you have an affected source subject to this subpart and you have an affected source that generates wastewater streams that meet the applicability thresholds specified in § 63.1256, you may elect to comply with the provisions of this subpart FFFF for all such wastewater streams.

(f) *Compliance with subpart MMM of this part 63 for wastewater.* After the compliance dates specified in § 63.2445, if you have an affected source subject to this subpart, and you have an affected source that generates wastewater streams that meet the applicability thresholds specified in § 63.1362(d), you may elect to comply with the provisions of this subpart FFFF for all such wastewater streams (except that the 99 percent reduction requirement for streams subject to § 63.1362(d)(10) still applies).

(g) *Compliance with other regulations for wastewater.* After the compliance dates specified in § 63.2445, if you have a Group 1 wastewater stream that is also subject to provisions in 40 CFR parts 260 through 272, you may elect to determine whether this subpart or 40 CFR parts 260 through 272 contain the more stringent control requirements (*e.g.*, design, operation, and inspection requirements for waste management units; numerical treatment standards; etc.) and the more stringent testing, monitoring, recordkeeping, and reporting requirements. Compliance with provisions of 40 CFR parts 260 through 272 that are determined to be more stringent than the requirements of this subpart constitute compliance with this subpart. For example, provisions of 40 CFR parts 260 through 272 for treatment units that meet the conditions specified in § 63.138(h) constitute compliance with this subpart. You must identify in the notification of compliance status report required by § 63.2520(d) the information and procedures that you used to make any stringency determinations.

(h) *Compliance with 40 CFR part 60, subpart DDD, III, NNN, or RRR.* After the compliance dates specified in § 63.2445, if you have an MCPU that contains equipment subject to the provisions of this subpart that are also subject to the provisions of 40 CFR part 60, subpart DDD, III, NNN, or RRR, you may elect to apply this subpart to all such equipment in the MCPU. If an MCPU subject to the provisions of this subpart has equipment to which this subpart does not apply but which is subject to a standard in 40 CFR part 60, subpart DDD, III, NNN, or RRR, you may elect to comply with the requirements for Group 1 process vents in this subpart for such equipment. If you elect any of these methods of compliance, you must consider all total organic compounds, minus methane and ethane, in such equipment for purposes of compliance with this subpart, as if they were organic HAP. Compliance with the provisions of this subpart, in the manner described in this paragraph (h), will constitute compliance with 40 CFR part 60, subpart DDD, III, NNN, or RRR, as applicable.

(i) *Compliance with 40 CFR part 61, subpart BB.* (1) After the compliance dates specified in § 63.2445, a Group 1 transfer rack, as defined in § 63.2550, that is also subject to the provisions of 40 CFR part 61, subpart BB, you are required to comply only with the provisions of this subpart.

(2) After the compliance dates specified in § 63.2445, a Group 2 transfer rack, as defined in § 63.2550, that is also subject to the provisions of 40 CFR part 61, subpart BB, is required to comply with the provisions of either paragraph (l)(2)(i) or (ii) of this section.

(i) If the transfer rack is subject to the control requirements specified in § 61.302 of 40 CFR part 61, subpart BB, then you may elect to comply with either the requirements of 40 CFR part 61, subpart BB, or the requirements for Group 1 transfer racks under this subpart FFFF.

(ii) If the transfer rack is subject only to reporting and recordkeeping requirements under 40 CFR part 61, subpart BB, then you are required to comply only with the reporting and recordkeeping requirements specified in this subpart for Group 2 transfer racks, and you are exempt from the reporting and recordkeeping requirements in 40 CFR part 61, subpart BB.

(j) *Compliance with 40 CFR part 61, subpart FF.* After the compliance date specified in § 63.2445, for a Group 1 or Group 2 wastewater stream that is also subject to the provisions of 40 CFR 61.342(c) through (h), and is not exempt under 40 CFR 61.342(c)(2) or (3), you may elect to comply only with the requirements for Group 1 wastewater streams in this subpart FFFF. If a Group 2 wastewater stream is exempted from 40 CFR 61.342(c)(1) under 40 CFR 61.342(c)(2) or (3), then you are required to comply only with the reporting and recordkeeping requirements specified in this subpart for Group 2 wastewater streams, and you are exempt from the requirements in 40 CFR part 61, subpart FF.

(k) *Compliance with 40 CFR part 60, subpart VV, and 40 CFR part 61, subpart V.* After the compliance date specified in § 63.2445, if you have an affected source with equipment that is also subject to the requirements of 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, you may elect to apply this subpart to all such equipment. Alternatively, if you have an affected source with no continuous process vents and equipment that is also subject to the requirements of 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, you may elect to comply with 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, as applicable, for all such equipment.

(l) *Applicability of process units included in a process unit group.* You may elect to develop and comply with the requirements for PUG in accordance with paragraphs (l)(1) through (3) of this section.

(1) *Procedures to create process unit groups.* Develop and document changes in a PUG in accordance with the procedures specified in paragraphs (l)(1)(i) through (v) of this section.

(i) Initially, identify an MCPU that is created from nondedicated equipment that will operate on or after November 10, 2003 and identify all processing equipment that is part of this MCPU, based on descriptions in operating scenarios.

(ii) Add to the group any other nondedicated MCPU and other nondedicated process units expected to be operated in the 5 years after the date specified in paragraph (l)(1)(i) of this section, provided they satisfy the criteria specified in paragraphs (l)(1)(ii)(A) through (C) of this section. Also identify all of the processing equipment used for each process unit based on information from operating scenarios and other applicable documentation.

(A) Each process unit that is added to a group must have some processing equipment that is also part of one or more process units in the group.

(B) No process unit may be part of more than one PUG.

(C) The processing equipment used to satisfy the requirement of paragraph (l)(1)(ii)(A) of this section may not be a storage tank or control device.

(iii) The initial PUG consists of all of the processing equipment for the process units identified in paragraphs (l)(1)(i) and (ii) of this section. As an alternative to the procedures specified in paragraphs (l)(1)(i) and (ii) of this section, you may use a PUG that was developed in accordance with § 63.1360(h) as your initial PUG.

(iv) Add process units developed in the future in accordance with the conditions specified in paragraphs (l)(1)(ii)(A) and (B) of this section.

(v) Maintain records that describe the process units in the initial PUG, the procedure used to create the PUG, and subsequent changes to each PUG as specified in § 63.2525(i). Submit the records in reports as specified in § 63.2520(d)(2)(ix) and (e)(8).

(2) *Determine primary product.* You must determine the primary product of each PUG created in paragraph (l)(1) of this section according to the procedures specified in paragraphs (l)(2)(i) through (iv) of this section.

(i) The primary product is the type of product (*e.g.*, organic chemicals subject to § 63.2435(b)(1), pharmaceutical products subject to § 63.1250, or pesticide active ingredients subject to § 63.1360) expected to be produced for the greatest operating time in the 5-year period specified in paragraph (l)(1)(ii) of this section.

(ii) If the PUG produces multiple types of products equally based on operating time, then the primary product is the type of product with the greatest production on a mass basis over the 5-year period specified in paragraph (l)(1)(ii) of this section.

(iii) At a minimum, you must redetermine the primary product of the PUG following the procedure specified in paragraphs (l)(2)(i) and (ii) of this section every 5 years.

(iv) You must record the calculation of the initial primary product determination as specified in § 63.2525(i)(3) and report the results in the notification of compliance status report as specified in § 63.2520(d)(8)(ix). You must record the calculation of each redetermination of the primary product as specified in § 63.2525(i)(5) and report the calculation in a compliance report submitted no later than the report covering the period for the end of the 5th year after cessation of production of the previous primary product, as specified in § 63.2520(e)(8).

(3) *Compliance requirements.* (i) If the primary product of the PUG is determined according to paragraph (l)(2) of this section to be material described in § 63.2435(b)(1), then you must comply with this subpart for each MCPU in the PUG. You may also elect to comply with this subpart for all other process units in the PUG, which constitutes compliance with other part 63 rules.

(ii) If the primary product of the PUG is determined according to paragraph (l)(2) of this section to be material not described in § 63.2435(b)(1), then you must comply with paragraph (l)(3)(ii)(A), (B), or (C) of this section, as applicable.

(A) If the primary product is subject to subpart GGG of this part 63, then comply with the requirements of subpart GGG for each MCPU in the PUG.

(B) If the primary product is subject to subpart MMM of this part 63, then comply with the requirements of subpart MMM for each MCPU in the PUG.

(C) If the primary product is subject to any subpart in this part 63 other than subpart GGG or subpart MMM, then comply with the requirements of this subpart for each MCPU in the PUG.

(iii) The requirements for new and reconstructed sources in the alternative subpart apply to all MCPU in the PUG if and only if the affected source under the alternative subpart meets the requirements for construction or reconstruction.

§ 63.2540 What parts of the General Provisions apply to me?

Table 12 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.2545 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency also has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of U.S. EPA and are not delegated to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emission limits and work practice standards in § 63.2450(a) under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.2550 What definitions apply to this subpart?

(a) For an affected source complying with the requirements in subpart SS of this part 63, the terms used in this subpart and in subpart SS of this part 63 have the meaning given them in § 63.981, except as specified in §§ 63.2450(k)(2) and (m), 63.2470(c)(2), 63.2475(b), and paragraph (i) of this section.

(b) For an affected source complying with the requirements in subpart TT of this part 63, the terms used in this subpart and in subpart TT of this part 63 have the meaning given them in § 63.1001.

(c) For an affected source complying with the requirements in subpart UU of this part 63, the terms used in this subpart and in subpart UU of this part 63 have the meaning given them in § 63.1020.

(d) For an affected source complying with the requirements in subpart WW of this part 63, the terms used in this subpart and subpart WW of this part 63 have the meaning given them in § 63.1061, except as specified in §§ 63.2450(m), 63.2470(c)(2), and paragraph (i) of this section.

(e) For an affected source complying with the requirements in §§ 63.132 through 63.149, the terms used in this subpart and §§ 63.132 through 63.149 have the meaning given them in §§ 63.101 and 63.111, except as specified in § 63.2450(m) and paragraph (i) of this section.

(f) For an affected source complying with the requirements in §§ 63.104 and 63.105, the terms used in this subpart and in §§ 63.104 and 63.105 of this subpart have the meaning given them in § 63.101, except as specified in §§ 63.2450(m), 63.2490(b), and paragraph (i) of this section.

(g) For an affected source complying with requirements in §§ 63.1253, 63.1257, and 63.1258, the terms used in this subpart and in §§ 63.1253, 63.1257, and 63.1258 have the meaning given them in § 63.1251, except as specified in § 63.2450(m) and paragraph (i) of this section.

(h) For an affected source complying with the requirements in 40 CFR part 65, subpart F, the terms used in this subpart and in 40 CFR part 65, subpart

F, have the meaning given them in 40 CFR 65.2.

(i) All other terms used in this subpart are defined in the Clean Air Act (CAA), in 40 CFR 63.2, and in this paragraph (i). If a term is defined in § 63.2, § 63.101, § 63.111, § 63.981, § 63.1001, § 63.1020, § 63.1061, § 63.1251, or § 65.2 and in this paragraph (i), the definition in this paragraph (i) applies for the purposes of this subpart.

Ancillary activities means boilers and incinerators (not used to comply with the emission limits in Tables 1 through 7 to this subpart), chillers and refrigeration systems, and other equipment and activities that are not directly involved (*i.e.*, they operate within a closed system and materials are not combined with process fluids) in the processing of raw materials or the manufacturing of a product or isolated intermediate.

Batch operation means a noncontinuous operation involving intermittent or discontinuous feed into equipment, and, in general, involves the emptying of the equipment after the operation ceases and prior to beginning a new operation. Addition of raw material and withdrawal of product do not occur simultaneously in a batch operation.

Batch process vent means a vent from a unit operation or vents from multiple unit operations within a process that are manifolded together into a common header, through which a HAP-containing gas stream is, or has the potential to be, released to the atmosphere. Examples of batch process vents include, but are not limited to, vents on condensers used for product recovery, reactors, filters, centrifuges, and process tanks. The following are not batch process vents for the purposes of this subpart:

(1) Continuous process vents;

(2) Bottoms receivers;

(3) Surge control vessels;

(4) Gaseous streams routed to a fuel gas system(s);

(5) Vents on storage tanks, wastewater emission sources, or pieces of equipment subject to the emission limits and work practice standards in Tables 4, 6, and 7 to this subpart;

(6) Drums, pails, and totes;

(7) Flexible elephant trunk systems that draw ambient air (*i.e.*, the system is not ducted, piped, or otherwise connected to the unit operations) away from operators when vessels are opened; and

(8) Emission streams from emission episodes that are undiluted and uncontrolled containing less than 50 ppmv HAP or less than 200 lb/yr. The HAP concentration or mass emission rate may be determined using any of the following: process knowledge that no HAP are present in the emission stream; an engineering assessment as discussed in § 63.1257(d)(2)(ii); equations specified in § 63.1257(d)(2)(i), as applicable; test data using Methods 18 of 40 CFR part 60, appendix A; or any other test method that has been validated according to the procedures in Method 301 of appendix A of this part 63.

Bottoms receiver means a tank that collects bottoms from continuous distillation before the stream is sent for storage or for further downstream processing.

Construction means the onsite fabrication, erection, or installation of an affected source or MCPU. Addition of new equipment to an MCPU subject to existing source standards does not constitute construction, but it may constitute reconstruction of the affected source or MCPU if it satisfies the definition of reconstruction in § 63.2.

Consumption means the quantity of all HAP raw materials entering a process in excess of the theoretical amount used as reactant, assuming 100 percent stoichiometric conversion. The raw materials include reactants, solvents, and any other additives. If a HAP is generated in the process as well as added as a raw material, consumption includes the quantity generated in the process.

Continuous process vent means the point of discharge to the atmosphere (or the point of entry into a control device, if any) of a gas stream if the gas stream has the characteristics specified in § 63.107(b) through (h), or meets the criteria specified in § 63.107(i), except:

(1) The reference in § 63.107(e) to a chemical manufacturing process unit that meets the criteria of § 63.100(b) means an MCPU that meets the criteria of § 63.2435(b);

(2) The reference in § 63.107(h)(4) to § 63.113 means Table 1 to this subpart;

(3) The references in § 63.107(h)(7) to §§ 63.119 and 63.126 mean Tables 4 and 5 to this subpart; and

(4) For the purposes of § 63.2455, all references to the characteristics of a process vent (*e.g.*, flowrate, total HAP concentration, or TRE index value) mean the characteristics of the gas stream.

Dedicated MCPU means an MCPU that consists of equipment that is used exclusively for one process, except that storage tanks assigned to the process according to the procedures in § 63.2435(d) also may be shared by other processes.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit, operating limit, or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Energetics means propellants, explosives, and pyrotechnics and include materials listed at 49 CFR 172.101 as Hazard Class I Hazardous Materials, Divisions 1.1 through 1.6.

Equipment means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in organic HAP service; and any control devices or systems used to comply with Table 6 to this subpart.

Excess emissions means emissions greater than those allowed by the emission limit.

Family of materials means a grouping of materials with the same basic composition or the same basic end use or functionality produced using the same basic feedstocks with essentially identical HAP emission profiles (primary constituent and relative magnitude on a pound per product basis) and manufacturing equipment configuration. Examples of families of materials include multiple grades of the same product or different variations of a product (*e.g.*, blue, black, and red resins).

Group 1 batch process vent means each of the batch process vents in a process for which the collective uncontrolled organic HAP emissions from all of the batch process vents are greater than or equal to 10,000 lb/yr at an existing source or greater than or equal to 3,000 lb/yr at a new source.

Group 2 batch process vent means each batch process vent that does not meet the definition of Group 1 batch process vent.

Group 1 continuous process vent means a continuous process vent with a total resource effectiveness index value, calculated according to § 63.2455(b), that is less than 1.9 at an existing source and less than 5.0 at a new source.

Group 2 continuous process vent means a continuous process vent that

does not meet the definition of a Group 1 continuous process vent.

Group 1 storage tank means a storage tank with a capacity greater than or equal to 10,000 gal storing material that has a maximum true vapor pressure of total HAP greater than or equal to 6.9 kilopascals at an existing source or greater than or equal to 0.69 kilopascals at a new source.

Group 2 storage tank means a storage tank that does not meet the definition of a Group 1 storage tank.

Group 1 transfer rack means a transfer rack that loads more than 0.65 million liters/year of liquids that contain organic HAP with a rack-weighted average partial pressure, as defined in § 63.111, greater than or equal to 1.5 pound per square inch absolute.

Group 2 transfer rack means a transfer rack that does not meet the definition of a Group 1 transfer rack.

Group 1 wastewater stream means a wastewater stream consisting of process wastewater at an existing or new source that meets the criteria for Group 1 status in § 63.2485(c) for compounds in Tables 8 and 9 to this subpart and/or a wastewater stream consisting of process wastewater at a new source that meets the criteria for Group 1 status in § 63.132(d) for compounds in Table 8 to subpart G of this part 63.

Group 2 wastewater stream means any process wastewater stream that does not meet the definition of a Group 1 wastewater stream.

Halogenated vent stream means a vent stream determined to have a mass emission rate of halogen atoms contained in organic compounds of 0.45 kilograms per hour or greater determined by the procedures presented in § 63.115(d)(2)(v).

Hydrogen halide and halogen HAP means hydrogen chloride, hydrogen fluoride, and chlorine.

In organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAP as determined according to the provisions of § 63.180(d). The provisions of § 63.180(d) also specify how to determine that a piece of equipment is not in organic HAP service.

Isolated intermediate means a product of a process that is stored before subsequent processing. An isolated intermediate is usually a product of a chemical synthesis, fermentation, or biological extraction process. Storage of an isolated intermediate marks the end of a process. Storage occurs at any time the intermediate is placed in equipment used solely for storage.

Large control device means a control device that controls total HAP emissions of greater than or equal to 10 tpy, before control.

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the MCPU into an individual drain system in preparation for or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewater include descaling of heat exchanger tubing bundles, cleaning of distillation column traps, draining of pumps into an individual drain system, and draining of portions of the MCPU for repair. Wastewater from routine cleaning operations occurring as part of batch operations is not considered maintenance wastewater.

Maximum true vapor pressure has the meaning given in § 63.111, except that it applies to all HAP rather than only organic HAP.

Miscellaneous organic chemical manufacturing process means all equipment which collectively function to produce a product or isolated intermediate that are materials described in § 63.2435(b). For the purposes of this subpart, process includes any, all or a combination of reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment which are used to produce a product or isolated intermediate. A process is also defined by the following:

(1) Routine cleaning operations conducted as part of batch operations are considered part of the process;

(2) Each nondedicated solvent recovery operation is considered a single process;

(3) Each nondedicated formulation operation is considered a single process that is used to formulate numerous materials and/or products;

(4) Quality assurance/quality control laboratories are not considered part of any process; and

(5) Ancillary activities are not considered a process or part of any process.

Nondedicated solvent recovery operation means a distillation unit or other purification equipment that receives used solvent from more than one MCPU.

Nonstandard batch means a batch process that is operated outside of the range of operating conditions that are documented in an existing operating scenario but is still a reasonably anticipated event. For example, a nonstandard batch occurs when additional processing or processing at different operating conditions must be conducted to produce a product that is normally produced under the conditions described by the standard batch. A nonstandard batch may be necessary as a result of a malfunction, but it is not itself a malfunction.

On-site or on site means, with respect to records required to be maintained by this subpart or required by another subpart referenced by this subpart, that records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the affected source or MCPU to which the records pertain, or storage in central files elsewhere at the major source.

Operating scenario means, for the purposes of reporting and recordkeeping, any specific operation of an MCPU as described by records specified in § 63.2525(b).

Organic group means structures that contain primarily carbon, hydrogen, and oxygen atoms.

Organic peroxides means organic compounds containing the bivalent -o-o- structure which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

Predominant HAP means as used in calibrating an analyzer, the single organic HAP that constitutes the largest percentage of the total organic HAP in the analyzed gas stream, by volume.

Process tank means a tank or vessel that is used within a process to collect material discharged from a feedstock storage tank or equipment within the process before the material is transferred to other equipment within the process or a product storage tank. A process tank has emissions that are related to the characteristics of the batch cycle, and it does not accumulate product over multiple batches. Surge control vessels and bottoms receivers are not process tanks.

Production-indexed HAP consumption factor (HAP factor) means the result of dividing the annual consumption of total HAP by the annual production rate, per process.

Production-indexed VOC consumption factor (VOC factor) means the result of dividing the annual consumption of total VOC by the annual production rate, per process.

Quaternary ammonium compounds means a type of organic nitrogen compound in which the molecular structure includes a central nitrogen atom joined to four organic groups as well as an acid radical of some sort.

Recovery device means an individual unit of equipment used for the purpose of recovering chemicals from process vent streams for reuse in a process at the affected source and from wastewater streams for fuel value (*i.e.*, net positive heating value), use, reuse, or for sale for fuel value, use or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. To be a recovery device for a wastewater stream, a decanter and any other equipment based on the operating principle of gravity separation must receive only multi-phase liquid streams.

Responsible official means responsible official as defined in 40 CFR 70.2.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purposes of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

Shutdown means the cessation of operation of a continuous operation for any purpose. Shutdown also means the cessation of a batch operation, or any related individual piece of equipment required or used to comply with this subpart, if the steps taken to cease operation differ from those described in a standard batch or nonstandard batch. Shutdown also applies to emptying and degassing storage vessels. Shutdown does not apply to cessation of batch operations at the end of a campaign or between batches within a campaign when the steps taken are routine operations.

Small control device means a control device that controls total HAP emissions of less than 10 tpy, before control.

Standard batch means a batch process operated within a range of operating conditions that are documented in an operating scenario. Emissions from a standard batch are based on the operating conditions that result in highest emissions. The standard batch defines the uncontrolled and controlled emissions for each emission episode defined under the operating scenario.

Startup means the setting in operation of a continuous operation for any purpose; the first time a new or reconstructed batch operation begins production; for new equipment added, including equipment required or used to comply with this subpart, the first time the equipment is put into operation; or for the introduction of a new product/process, the first time the product or process is run in equipment. For batch operations, startup applies to the first time the equipment is put into operation at the start of a campaign to produce a product that has been produced in the past if the steps taken to begin production differ from those specified in a standard batch or nonstandard batch. Startup does not apply when the equipment is put into operation as part of a batch within a campaign when the steps taken are routine operations.

Storage tank means a tank or other vessel that is used to store liquids that contain organic HAP and/or hydrogen halide and halogen HAP and that has been assigned to an MCPU according to the procedures in § 63.2435(d). The following are not considered storage tanks for the purposes of this subpart:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels storing organic liquids that contain HAP only as impurities;

(4) Wastewater storage tanks;

(5) Bottoms receivers;

(6) Surge control vessels; and

(7) Process tanks.

Supplemental gases are any gaseous streams that are not defined as process vents, or closed-vent systems from wastewater management and treatment units, storage tanks, or equipment components and that contain less than 50 ppmv TOC, as determined through process knowledge, that are introduced into vent streams or manifolds. Air required to operate combustion device burner(s) is not considered supplemental gas.

Surge control vessel means feed drums, recycle drums, and intermediate vessels immediately preceding continuous reactors, air-oxidation reactors, or distillation operations. Surge control vessels are used within an MCPU when in-process storage, mixing, or management of flowrates or volumes is needed to introduce material into continuous reactors, air-oxidation reactors, or distillation operations.

Total organic compounds or (TOC) means the total gaseous organic compounds (minus methane and ethane) in a vent stream.

Transfer rack means the collection of loading arms and loading hoses, at a single loading rack, that are assigned to an MCPU according to the procedures specified in § 63.2435(d) and are used to fill tank trucks and/or rail cars with organic liquids that contain one or more of the organic HAP listed in section 112(b) of the CAA of this subpart. Transfer rack includes the associated pumps, meters, shutoff valves, relief valves, and other piping and valves.

Unit operation means those processing steps that occur within distinct equipment that are used, among other things, to prepare reactants, facilitate reactions, separate and purify products, and recycle materials. Equipment used for these purposes includes, but is not limited to, reactors, distillation columns, extraction columns, absorbers, decanters, dryers, condensers, and filtration equipment.

Waste management unit means the equipment, structure(s), and/or device(s) used to convey, store, treat, or dispose of wastewater streams or residuals. Examples of waste management units include wastewater tanks, air flotation units, surface impoundments, containers, oil-water or organic-water separators, individual drain systems, biological wastewater treatment units, waste incinerators, and organic removal devices such as steam and air stripper units, and thin film evaporation units. If such equipment is being operated as a recovery device, then it is part of a miscellaneous organic chemical manufacturing process and is not a waste management unit.

Wastewater means water that is discarded from an MCPU through a single POD and that contains either: an annual average concentration of compounds in Table 8 or 9 to this subpart of at least 5 ppmw and has an annual average flowrate of 0.02 liters per minute or greater; or an annual average concentration of compounds in Table 8 or 9 to this subpart of at least 10,000 ppmw at any flowrate. The

following are not considered wastewater for the purposes of this subpart:

(1) Stormwater from segregated sewers;

(2) Water from fire-fighting and deluge systems, including testing of such systems;

(3) Spills;

(4) Water from safety showers;

(5) Samples of a size not greater than reasonably necessary for the method of analysis that is used;

(6) Equipment leaks;

(7) Wastewater drips from procedures such as disconnecting hoses after cleaning lines; and

(8) Noncontact cooling water.

Wastewater stream means a stream that contains only wastewater as defined in this paragraph (h).

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

Tables to Subpart FFFF of Part 63

As required in § 63.2455, you must meet each emission limit and work practice standard in the following table that applies to your continuous process vents:

TABLE 1 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR CONTINUOUS PROCESS VENTS

For each . . .	For which . . .	Then you must . . .
1. Group 1 continuous process vent.	a. Not applicable	i. Reduce emissions of total organic HAP by ≥98 percent by weight or to an outlet process concentration ≤20 ppmv as organic HAP or TOC by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total organic HAP by venting emissions through a closed vent system to a flare; or iii. Use a recovery device to maintain the TRE above 1.9 for an existing source or above 5.0 for a new source.
2. Halogenated Group 1 continuous process vent stream.	a. You use a combustion control device to control organic HAP emissions.	i. Use a halogen reduction device after the combustion device to reduce emissions of hydrogen halide and halogen HAP by ≥99 percent by weight, or to ≤0.45 kg/hr, or to ≤20 ppmv; or ii. Use a halogen reduction device before the combustion device to reduce the halogen atom mass emission rate to ≤0.45 kg/hr or to a concentration ≤20 ppmv.
3. Group 2 continuous process vent at an existing source.	You use a recovery device to maintain the TRE level >1.9 but ≤5.0.	Comply with the requirements in § 63.993 and the requirements referenced therein.
4. Group 2 continuous process vent at a new source.	You use a recovery device to maintain the TRE level >5.0 but ≤8.0.	Comply with the requirements in § 63.993 and the requirements referenced therein.

As required in § 63.2460, you must meet each emission limit and work practice standard in the following table that applies to your batch process vents:

TABLE 2 TO SUBPART FFFF OF PART 63. EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR BATCH PROCESS VENTS

For each . . .	Then you must . . .	And you must . . .
1. Process with Group 1 batch process vents.	a. Reduce collective uncontrolled organic HAP emissions from the sum of all batch process vents within the process by ≥98 percent by weight by venting emissions from a sufficient number of the vents through a closed-vent system to any combination of control devices (except a flare); or	Not applicable.
	b. Reduce collective uncontrolled organic HAP emissions from the sum of all batch process vents within the process by ≥95 percent by weight by venting emissions from a sufficient number of the vents through a closed-vent system to any combination of recovery devices; or	Not applicable.
	c. For all batch process vents within the process that are not controlled by venting through a closed-vent system to a flare or to any other combination of control devices that reduce total organic HAP to an outlet concentration ≤20 ppmv as TOC or total organic HAP, reduce organic HAP emissions by venting emissions from a sufficient number of the vents through a closed-vent system to any combination of recovery devices that reduce collective emissions by ≥95 percent by weight and/or any combination of control devices that reduce collective emissions by ≥98 percent by weight.	Not applicable.

TABLE 2 TO SUBPART FFFF OF PART 63. EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR BATCH PROCESS VENTS—Continued

For each . . .	Then you must . . .	And you must . . .
2. Halogenated Group 1 batch process vent for which you use a combustion device to control organic HAP emissions.	a. Use a halogen reduction device after the combustion control device; or	i. Reduce overall emissions of hydrogen halide and halogen HAP by ≥99 percent; or ii. Reduce overall emissions of hydrogen halide and halogen HAP to ≤0.45 kg/hr; or iii. Reduce overall emissions of hydrogen halide and halogen HAP to a concentration ≤20 ppmv.
	b. Use a halogen reduction device before the combustion control device.	Reduce the halogen atom mass emission rate to ≤0.45 kg/hr or to a concentration ≤20 ppmv.

As required in § 63.2465, you must meet each emission limit in the following table that applies to your process vents that contain hydrogen halide and halogen HAP emissions or PM HAP emissions:

TABLE 3 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS FOR HYDROGEN HALIDE AND HALOGEN HAP EMISSIONS OR PM HAP EMISSIONS FROM PROCESS VENTS

For each . . .	You must . . .
1. Process with uncontrolled hydrogen halide and halogen HAP emissions from process vents ≥1,000 lb/yr.	Reduce collective hydrogen halide and halogen HAP emissions by ≥99 percent by weight or to an outlet concentration <20 ppmv by venting through a closed-vent system to any combination of control devices.
2. Process at a new source with uncontrolled PM HAP emissions from process vents ≥400 lb/yr.	Reduce overall PM HAP emissions by ≥97 percent by weight.

As required in § 63.2470, you must meet each emission limit in the following table that applies to your storage tanks:

TABLE 4 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS FOR STORAGE TANKS

For each . . .	For which . . .	Then you must . . .
1. Group 1 storage tank	a. The maximum true vapor pressure of total HAP at the storage temperature is ≥76.6 kilopascals.	i. Reduce total HAP emissions by ≥95 percent by weight or to ≤20 ppmv of TOC or organic HAP and ≤20 ppmv of hydrogen halide and halogen HAP by venting emissions through a closed vent system to any combination of control devices (excluding a flare); or ii. Reduce total organic HAP emissions by venting emissions through a closed vent system to a flare; or iii. Reduce total HAP emissions by venting emissions to a fuel gas system or process.
	b. The maximum true vapor pressure of total HAP at the storage temperature is ≤76.6 kilopascals.	i. Comply with the requirements of subpart WW of this part, except as specified in § 63.2470; or ii. Reduce total HAP emissions by ≥95 percent by weight or to <20 ppmv of TOC or organic HAP and <20 ppmv of hydrogen halide and halogen HAP by venting emissions through a closed vent system to any combination of control devices (excluding a flare); or iii. Reduce total organic HAP emissions by venting emissions through a closed vent system to a flare; or iv. Reduce total HAP emissions by venting emissions to a fuel gas system or process.
2. Halogenated vent stream from a Group 1 storage tank.	You use a combustion control device to control organic HAP emissions.	Meet one of the emission limit options specified in Item 2.a.i or ii. in Table 1 to this subpart.

As required in § 63.2475, you must meet each emission limit and work practice standard in the following table that applies to your transfer racks:

TABLE 5 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR TRANSFER RACKS

For each . . .	You must . . .
1. Group 1 transfer rack	a. Reduce emissions of total organic HAP by ≥98 percent by weight or to an outlet concentration ≤20 ppmv as organic HAP or TOC by venting emissions through a closed-vent system to any combination of control devices (except a flare); or

TABLE 5 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR TRANSFER RACKS—Continued

For each . . .	You must . . .
2. Halogenated Group 1 transfer rack vent stream for which you use a combustion device to control organic HAP emissions.	b. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a flare; or c. Reduce emissions of total organic HAP by venting emissions to a fuel gas system or process; or d. Use a vapor balancing system designed and operated to collect organic HAP vapors displaced from tank trucks and railcars during loading and route the collected HAP vapors to the storage tank from which the liquid being loaded originated or to another storage tank connected by a common header. a. Use a halogen reduction device after the combustion device to reduce emissions of hydrogen halide and halogen HAP by ≥99 percent by weight, to ≤0.45 kg/hr, or to ≤20 ppmv; or b. Use a halogen reduction device before the combustion device to reduce the halogen atom mass emission rate to ≤0.45 kg/hr or to a concentration ≤20 ppmv.

As required in § 63.2480, you must meet each requirement in the following table that applies to your equipment leaks:

TABLE 6 TO SUBPART FFFF OF PART 63.—REQUIREMENTS FOR EQUIPMENT LEAKS

For all . . .	And that is part of . . .	You must . . .
1. Equipment that is in organic HAP service at an existing source.	a. An MCPU with no continuous process vents.	i. Comply with the requirements of subpart TT of this part 63 and the requirements referenced therein; or ii. Comply with the requirements of subpart UU of this part 63 and the requirements referenced therein; or iii. Comply with the requirements of 40 CFR part 65, subpart F.
	b. An MCPU with at least one continuous process vent.	i. Comply with the requirements of subpart UU of this part 63 and the requirements referenced therein; or ii. Comply with the requirements of 40 CFR part 65, subpart F.
2. Equipment that is in organic HAP service at a new source.	a. Any MCPU	i. Comply with the requirements of subpart UU of this part 63 and the requirements referenced therein; or ii. Comply with the requirements of 40 CFR part 65, subpart F.

As required in § 63.2485, you must meet each requirement in the following table that applies to your wastewater streams and liquid streams in open systems within an MCPU:

TABLE 7 TO SUBPART FFFF OF PART 63.—REQUIREMENTS FOR WASTEWATER STREAMS AND LIQUID STREAMS IN OPEN SYSTEMS WITHIN AN MCPU

For each . . .	You must . . .
1. Process wastewater stream	Comply with the requirements in §§ 63.132 through 63.148 and the requirements referenced therein, except as specified in § 63.2485.
2. Maintenance wastewater stream	Comply with the requirements in § 63.105 and the requirements referenced therein, except as specified in § 63.2485.
3. Liquid streams in an open system within an MCPU.	Comply with the requirements in § 63.149 and the requirements referenced therein, except as specified in § 63.2485.

As specified in § 63.2485, the partially soluble HAP in wastewater that are subject to management and treatment requirements in this subpart FFFF are listed in the following table:

TABLE 8 TO SUBPART FFFF OF PART 63.—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name . . .	CAS No.
1. 1,1,1–Trichloroethane (methyl chloroform)	71556
2. 1,1,2,2–Tetrachloroethane	79345
3. 1,1,2–Trichloroethane	79005
4. 1,1–Dichloroethylene (vinylidene chloride)	75354
5. 1,2–Dibromoethane	106934
6. 1,2–Dichloroethane (ethylene dichloride)	107062
7. 1,2–Dichloropropane	78875
8. 1,3–Dichloropropene	542756
9. 2,4,5–Trichlorophenol	95954
10. 2–Butanone (MEK)	78933
11. 1,4–Dichlorobenzene	106467

TABLE 8 TO SUBPART FFFF OF PART 63.—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name . . .	CAS No.
12. 2–Nitropropane	79469
13. 4–Methyl-2-pentanone (MIBK)	108101
14. Acetaldehyde	75070
15. Acrolein	107028
16. Acrylonitrile	107131
17. Allyl chloride	107051
18. Benzene	71432
19. Benzyl chloride	100447
20. Biphenyl	92524
21. Bromoform (tribromomethane)	75252
22. Bromomethane	74839
23. Butadiene	106990
24. Carbon disulfide	75150
25. Chlorobenzene	108907
26. Chloroethane (ethyl chloride)	75003
27. Chloroform	67663
28. Chloromethane	74873
29. Chloroprene	126998
30. Cumene	98828
31. Dichloroethyl ether	111444
32. Dinitrophenol	51285
33. Epichlorohydrin	106898
34. Ethyl acrylate	140885
35. Ethylbenzene	100414
36. Ethylene oxide	75218
37. Ethylidene dichloride	75343
38. Hexachlorobenzene	118741
39. Hexachlorobutadiene	87683
40. Hexachloroethane	67721
41. Methyl methacrylate	80626
42. Methyl-t-butyl ether	1634044
43. Methylene chloride	75092
44. N-hexane	110543
45. N,N-dimethylaniline	121697
46. Naphthalene	91203
47. Phosgene	75445
48. Propionaldehyde	123386
49. Propylene oxide	75569
50. Styrene	100425
51. Tetrachloroethylene (perchloroethylene)	79345
52. Tetrachloromethane (carbon tetrachloride)	56235
53. Toluene	108883
54. Trichlorobenzene (1,2,4-)	120821
55. Trichloroethylene	79016
56. Trimethylpentane	540841
57. Vinyl acetate	108054
58. Vinyl chloride	75014
59. Xylene (m)	108383
60. Xylene (o)	95476
61. Xylene (p)	106423

As specified in § 63.2485, the soluble HAP in wastewater that are subject to management and treatment requirements of this subpart FFFF are listed in the following table:

TABLE 9 TO SUBPART FFFF OF PART 63.—SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name . . .	CAS No.
1. Acetonitrile	75058
2. Acetophenone	98862
3. Diethyl sulfate	64675
4. Dimethyl hydrazine (1,1)	58147
5. Dimethyl sulfate	77781
6. Dinitrotoluene (2,4)	121142
7. Dioxane (1,4)	123911
8. Ethylene glycol dimethyl ether	
9. Ethylene glycol monobutyl ether acetate	
10. Ethylene glycol monomethyl ether acetate	

TABLE 9 TO SUBPART FFFF OF PART 63.—SOLUBLE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name . . .	CAS No.
11. Isophorone	78591
12. Methanol	67561
13. Nitrobenzene	98953
14. Toluidine (o-)	95534
15. Triethylamine	121448

As required in § 63.2490, you must meet each requirement in the following table that applies to your heat exchange systems:

TABLE 10 TO SUBPART FFFF OF PART 63.—WORK PRACTICE STANDARDS FOR HEAT EXCHANGE SYSTEMS

For each . . .	You must . . .
Heat exchange system, as defined in § 63.101	Comply with the requirements of § 63.104 and the requirements referenced therein, except as specified in § 63.2490.

As required in § 63.2520(a) and (b), you must submit each report that applies to you on the schedule shown in the following table:

TABLE 11 TO SUBPART FFFF OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. Precompliance report	The information specified in § 63.2520(c).	At least 6 months prior to the compliance date; or for new sources, with the application for approval of construction or reconstruction.
2. Notification of compliance status report.	The information specified in § 63.2520(d).	No later than 150 days after the compliance date specified in § 63.2445.
3. Compliance report	The information specified in § 63.2520(e).	Semiannually according to the requirements in § 63.2520(b).

As specified in § 63.2540, the parts of the General Provisions that apply to you are shown in the following table:

TABLE 12 TO SUBPART FFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFF

Citation	Subject	Explanation
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities	Yes.
§ 63.5	Construction/Reconstruction	Yes.
§ 63.6(a)	Applicability	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Yes.
§ 63.6(b)(5)	Notification	Yes.
§ 63.6(b)(6)	[Reserved].	
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Yes.
§ 63.6(c)(3)–(4)	[Reserved].	
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Yes
§ 63.6(d)	[Reserved].	
§ 63.6(e)(1)–(2)	Operation & Maintenance	Yes.
§ 63.6(e)(3)(i), (ii), and (v) through (viii).	Startup, Shutdown, Malfunction Plan (SSMP)	Yes, except information regarding Group 2 emission points and equipment leaks is not required in the SSMP, as specified in § 63.2525(j).
§ 63.6(e)(3)(iii) and (iv)	Recordkeeping and Reporting During SSM	No, § 63.998(d)(3) and 63.998(c)(1)(ii)(D) through (G) specify the recordkeeping requirement for SSM events, and § 63.2520(e)(4) specifies reporting requirements.
§ 63.6(f)(1)	Compliance Except During SSM	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Yes.

TABLE 12 TO SUBPART FFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFF—Continued

Citation	Subject	Explanation
§ 63.6(h)	Opacity/Visible Emission (VE) Standards	Only for flares for which Method 22 observations are required as part of a flare compliance assessment.
§ 63.6(i)(1)–(14)	Compliance Extension	Yes.
§ 63.6(j)	Presidential Compliance Exemption	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Yes, except substitute 150 days for 180 days.
§ 63.7(a)(3)	Section 114 Authority	Yes, and this paragraph also applies to flare compliance assessments as specified under § 63.997(b)(2).
§ 63.7(b)(1)	Notification of Performance Test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	Yes.
§ 63.7(c)	Quality Assurance/Test Plan	Yes, except the test plan must be submitted with the notification of the performance test if the control device controls batch process vents.
§ 63.7(d)	Testing Facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests	Yes, except that performance tests for batch process vents must be conducted under worst-case conditions as specified in § 63.2460.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests	Yes.
§ 63.7(e)(3)	Test Run Duration	Yes.
§ 63.7(f)	Alternative Test Method	Yes.
§ 63.7(g)	Performance Test Data Analysis	Yes.
§ 63.7(h)	Waiver of Tests	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Yes.
§ 63.8(a)(2)	Performance Specifications	Yes.
§ 63.8(a)(3)	[Reserved].	
§ 63.8(a)(4)	Monitoring with Flares	Yes.
§ 63.8(b)(1)	Monitoring	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Yes.
§ 63.8(c)(1)(ii)	SSM not in SSMP	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Yes.
§ 63.8(c)(4)	CMS Requirements	No. CMS requirements are specified in referenced subparts G and SS of this part 63.
§ 63.8(c)(4)(i)–(ii)		Only for the alternative standard, but § 63.8(c)(4)(i) does not apply because the alternative standard does not require continuous opacity monitoring systems (COMS).
§ 63.8(c)(5)	COMS Minimum Procedures	No. Subpart FFFF does not contain opacity or VE limits.
§ 63.8(c)(6)	CMS Requirements	Only for the alternative standard in § 63.2505.
§ 63.8(c)(7)–(8)	CMS Requirements	Only for the alternative standard in § 63.2505. Requirements for CPMS are specified in referenced subparts G and SS of this part 63.
§ 63.8(d)	CMS Quality Control	Only for the alternative standard in § 63.2505.
§ 63.8(e)	CMS Performance Evaluation	Only for the alternative standard in § 63.2505, but § 63.8(e)(5)(ii) does not apply because the alternative standard does not require COMS.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Yes, except you may also request approval using the precompliance report.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	Only applicable when using CEMS to demonstrate compliance, including the alternative standard in § 63.2505.
§ 63.8(g)(1)–(4)	Data Reduction	Only when using CEMS, including for the alternative standard in § 63.2505, except that the requirements for COMS do not apply because subpart FFFF has no opacity or VE limits, and § 63.8(g)(2) does not apply because data reduction requirements for CEMS are specified in § 63.2450(j).
§ 63.8(g)(5)	Data Reduction	No. Requirements for CEMS are specified in § 63.2450(j). Requirements for CPMS are specified in referenced subparts G and SS of this part 63.
§ 63.9(a)	Notification Requirements	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	Yes.
§ 63.9(c)	Request for Compliance Extension	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	Yes.
§ 63.9(e)	Notification of Performance Test	Yes.
§ 63.9(f)	Notification of VE/Opacity Test	No. Subpart FFFF does not contain opacity or VE limits.

TABLE 12 TO SUBPART FFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFF—Continued

Citation	Subject	Explanation
§63.9(g)	Additional Notifications When Using CMS	Only for the alternative standard in §63.2505.
§63.9(h)(1)–(6)	Notification of Compliance Status	Yes, except subpart FFFF has no opacity or VE limits, and §63.9(h)(2) does not apply because §63.2520(d) specifies the required contents and due date of the notification of compliance status report.
§63.9(i)	Adjustment of Submittal Deadlines	Yes.
§63.9(j)	Change in Previous Information	No, §63.2520(e) specifies reporting requirements for process changes.
§63.10(a)	Recordkeeping/Reporting	Yes.
§63.10(b)(1)	Recordkeeping/Reporting	Yes.
§63.10(b)(2)(i)–(ii), (iv), (v)	Records related to SSM	No, §§63.998(d)(3) and 63.998(c)(1)(ii)(D) through (G) specify recordkeeping requirements for periods of SSM.
§63.10(b)(2)(iii)	Records related to maintenance of air pollution control equipment.	Yes.
§63.10(b)(2)(vi), (x), and (xi)	CMS Records	Only for CEMS; requirements for CPMS are specified in referenced subparts G and SS of this part 63.
§63.10(b)(2)(vii)–(ix)	Records	Yes.
§63.10(b)(2)(xii)	Records	Yes.
§63.10(b)(2)(xiii)	Records	Only for the alternative standard in §63.2505.
§63.10(b)(2)(xiv)	Records	Yes.
§63.10(b)(3)	Records	Yes.
§63.10(c)(1)–(6), (9)–(15)	Records	Only for the alternative standard in §63.2505.
§63.10(c)(7)–(8)	Records	No. Recordkeeping requirements are specified in §63.2525.
§63.10(d)(1)	General Reporting Requirements	Yes.
§63.10(d)(2)	Report of Performance Test Results	Yes.
§63.10(d)(3)	Reporting Opacity or VE Observations	No. Subpart FFFF does not contain opacity or VE limits.
§63.10(d)(4)	Progress Reports	Yes.
§63.10(d)(5)(i)	Periodic Startup, Shutdown, and Malfunction Reports	No, §63.2520(e)(4) and (5) specify the SSM reporting requirements.
§63.10(d)(5)(ii)	Immediate SSM Reports	No.
§63.10(e)(1)–(2)	Additional CMS Reports	Only for the alternative standard, but §63.10(e)(2)(ii) does not apply because the alternative standard does not require COMS.
§63.10(e)(3)	Reports	No. Reporting requirements are specified in §63.2520.
§63.10(e)(3)(i)–(iii)	Reports	No. Reporting requirements are specified in §63.2520.
§63.10(e)(3)(iv)–(v)	Excess Emissions Reports	No. Reporting requirements are specified in §63.2520.
§63.10(e)(3)(iv)–(v)	Excess Emissions Reports	No. Reporting requirements are specified in §63.2520.
§63.10(e)(3)(vi)–(viii)	Excess Emissions Report and Summary Report	No. Reporting requirements are specified in §63.2520.
§63.10(e)(4)	Reporting COMS data	No. Subpart FFFF does not contain opacity or VE limits.
§63.10(f)	Waiver for Recordkeeping/Reporting	Yes.
§63.11	Flares	Yes.
§63.12	Delegation	Yes.
§63.13	Addresses	Yes.
§63.14	Incorporation by Reference	Yes.
§63.15	Availability of Information	Yes.

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Federal Register

Monday,
November 10, 2003

Part III

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2003; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4854–N–02]

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2003

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waivers from April 1, 2003, through June 30, 2003.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2003, and ending on June 30, 2003.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver-grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). This notice covers waivers of regulations granted by HUD from April 1, 2003, through June 30, 2003. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, *etc.*). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver-grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived as part of the waiver-grant action. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver-grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred during July 1, 2003, through September 30, 2003.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: October 30, 2003.

Alphonso Jackson,

Deputy Secretary.

Appendix— Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2003, Through June 30, 2003

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 570.208(a)(3).

Project/Activity: Ramsey County, MN, Community Development Block Grant (CDBG) Program.

Waiver Request: A waiver to allow Ramsey County to provide CDBG funds to Beaver Creek Carriage Homes for the rehabilitation of the exterior of the buildings in the complex.

Nature of Requirement: Section 570.208(a)(3) provides that eligible activities carried out for the purpose of providing or improving permanent residential structures will be considered to benefit low- and moderate-income households to the extent they are occupied by such households.

Granted By: Nelson A. Bregon, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: June 26, 2003.

Reasons Waived: Information provided by Ramsey County concludes that after conducting a survey of the residents in the complex, from the data collected, more than 51 percent of the units in these multiple residential buildings, that are not rental buildings, are occupied by low- and moderate-income households. Therefore, HUD allowed a waiver under the authority of 24 CFR 5.110 based on a determination of good cause to waive the requirement

at 24 CFR 570.208(a)(3) to allow the county to use CDBG funds for a loan to the Beaver Creek Carriage Homes Association for the rehabilitation of the exterior and common area of three non-rental residential buildings under common ownership and management, 62 percent of which are occupied by low- and moderate-income households. The funds for the low-interest loan will minimize the cost to the unit owners and the association to complete the major improvements necessary to maintain the safety, integrity, and habitability of these housing units.

Contact: Nanci R. Doherty, Special Assistant to the Deputy Assistant Secretary, Community Planning and Development, Department of Housing and Urban Development 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: 202–708–2565.

II. Regulatory Waivers Granted by the Office of Housing

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR part 291, subpart F.

Project/Activity: All Officer Next Door/Teacher Next Door (OND/TND) program participants who have been called to active duty status nationwide.

Nature of Requirement: The Department of Housing and Urban Development is permitting a special accommodation relative to its OND/TND program. The program provides police officers and teachers the opportunity to purchase HUD-owned homes at a significant discount. Among the conditions for participation, police officers and teachers must agree to occupy the property as their primary residence for a mandatory three-year period following the closing date of the sale. Under the terms of the OND/TND contract, participants who do not satisfy the residency requirement must refund a prorated portion of the discount to HUD. Those OND/TND borrowers who are called to active duty at posts outside the commuting area of their hometowns may be unable to satisfy the occupancy requirement. For these individuals, HUD will credit all time served on active duty against the three-year occupancy period. Any person in the "military service" as defined in the determined to be eligible for relief under the provisions of the "Sailors and Soldiers Civil Relief Act of 1940," may request the special accommodation.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 25, 2003.

Reason Waived: The waiver provides authority to provide a credit of time for participants in the OND/TND Program, reducing the program occupancy requirement to the time served on active duty military service at a post outside the program participants' hometown commuting area. This waiver recognizes the importance of the service rendered by our military personnel as well as the impossibility of performance of the occupancy period when a military service member is ordered to a post away from home.

Contact: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–1672.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Sphinx at Murdeaux Villas, Dallas, TX; Project Number: 113–35188.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and Federal Housing Administration (FHA)-insured proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 17, 2003.

Reason Waived: The regulation was waived since the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased the Government National Mortgage Association (GNMA) mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Fort Worth Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Lancaster Apartments, Gary, IN; Project Number: 073–35582.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and FHA-insured proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 18, 2003.

Reason Waived: The regulation was waived since the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased the Government National Mortgage Association (GNMA) mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Indianapolis Multifamily Program Center to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Southside Villas, San Antonio, TX, Project Number: 115–35444.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and FHA-insured proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 12, 2003.

Reason Waived: The regulation was waived since the front money escrow is so large, the insured proceeds would not be disbursed for several months after initial endorsement, resulting in payment of extension fees to the investors who purchased GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Fort Worth Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: 1135 Broadway Residences, Denver, CO, Project Number: 101–35562.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and FHA-insured proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 16, 2003.

Reason Waived: The regulation was waived since the front money escrow is so large, the insured proceeds would not be disbursed for several months after initial endorsement, resulting in payment of extension fees to the investors who purchased GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Denver Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Montclare Apartments, Phase II, Chicago, IL, Project Number: 071–35725.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and FHA-insured proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 25, 2003.

Reason Waived: The regulation was waived since the front money escrow is so large, the insured proceeds would not be disbursed for several months after initial endorsement, resulting in payment of extension fees to the investors who purchased GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Chicago Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 234.1(a).

Project/Activity: Airport Road Townhomes, Snohomish County, WA.

Nature of Requirement: Section 203.43f of HUD's regulations sets forth the eligibility criteria for mortgages covering manufactured homes. Section 234 of HUD's regulations sets forth the eligibility requirements for insurance of individual units in a condominium project. Section 234.1(a) incorporates by reference various provisions of 24 CFR part 203 Subpart A, of the regulations concerning the eligibility requirements of mortgages covering one-to-four-family dwellings under Section 203 of the National Housing Act. Section 234.1(a) also lists specific provisions that are not applicable to mortgages insured under Section 234. Section 203.43f, related to the insurance of mortgages on manufactured homes, is one of the exclusions listed under section 234.1(a).

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 2, 2003.

Reason Waived: Among the primary reasons manufactured homes were initially excluded from eligibility for mortgage insurance as part of condominium projects were concerns about the durability of individual homes and the product's inconsistency with traditional configurations of the early condominium projects (typically garden or high-rise construction). The homes to be developed at Airport Road Townhomes have undergone extensive engineering analyses, first to comply with the Federal Manufactured Home Construction and Safety Standards and then to obtain HUD approval of an Alternate Construction request, which was granted to the manufacturer on December 11, 2000. With the current state of the art and the extensive engineering review, concerns about the durability of this product is minimal.

Contact: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–2121.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 491.600):

FHA No.	Project name	State
01257205	Dean North Apartments.	NY
01235484	Meadowbrook Farms (aka New Paltz).	NY
01257202	New West 111th Street Phase II.	NY
01257142	Noonan Plaza	NY
08435134	Springview Gardens	MO
01257159	Sutter Houses	NY
07135524	West End Rehab	IL

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA-insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2003.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000; telephone: (202) 708–3856.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 491.600):

FHA No.	Project name	State
8335339	Town House Apartments.	KY
13635643	Valley Heights	CA
06135371	Edgewood Housing II	GA
07335448	The Crossings II Apartments.	IN
10235164	Tumbleweed Apartments.	KS
08335274	Pride Terrace Apartments.	KY
05235600	Franklin Center	MD
01335109	Ninth Street NSA II	NY
01257162	Pennsylvania Avenue Apartments.	NY
01257180	Union Gardens I	NY
04235343	Bay Meadows Apartments.	OH
04235345	Little Bark View	OH
11835102	McAlester Plaza	OK
05635094	Vistas De Jagueyes	PR
08735116	Village Apartments	TN

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA-insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 20, 2003.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000; telephone (202) 708–3856.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 491.600):

FHA No.	Project name	State
01257076	1988 Davidson Avenue.	NY
01257075	Davidson Avenue Rehab II.	NY
04635663	Fair Park Apartments	OH
11535193	Meadow Park Village	TX
08535339	Minerva Place Apartments.	MO
05135322	Springdale Village	VA
10935050	Stagecoach Apartments.	WY
02435052	Sugar River Mills Housing.	NH
05235300	Washington Gardens	MD
01735185	Waterbury NSA II	CT

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA-insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 18, 2003.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000; telephone: (202) 708–3856.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Ida B. Wells Apartments, Hartford, CT; Project Number: 017–EE058/CT26–S001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 1, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: ICAN Garden Apartments, Massillon, OH; Project Number: 042–HD090/OH12–Q001–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 1, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: NBA Estes Gardens, Tucson, AZ; Project Number: 123–EE082/AZ20–S011–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 2, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Oak Tree Apartments, Huntington, WV; Project Number: 045–HD031/WV15–Q001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 3, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: South Philadelphia Presbyterian Apartments, Philadelphia, PA; Project Number: 034–EE113/PA26–S011–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 10, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Snowden House, Dorchester, MA; Project Number: 023–EE115/MA06–S991–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Covered Bridge Manor, Dover, NH; Project Number: 024–EE059/NH36–S011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.
• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Fayette Street Project, Concord, NH; Project Number: 024–HD035/NH36–Q011–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: April 22, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.
• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Los Jardines Senior Housing, Wilmington, DE; Project Number: 032–EE011/DE26–S011–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: April 28, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.
• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Washington Park Elderly, Chicago, IL; Project Number: 071–EE158/IL06–S001–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: April 28, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.
• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Valdosta/Lowndes County Options for Living, Valdosta, GA; Project Number: 061–HD080/GA06–Q011–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 2, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.
• *Regulation:* 24 CFR 891.100(d).
Project/Activity: St. Theresa's Elder Apartments, Lynn, MA; Project Number: 023–EE133/MA06–S011–005.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 9, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.
• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Harbor Lights Housing, Rockland, ME; Project Number: 024–HD036/ME36–Q011–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 9, 2003.
Reason Waived: The sponsor secured additional financing in the amount of $100,000 from the Maine State Housing Authority, and has exhausted means of getting additional funding through other resources. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.
• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Ghost Creek Housing, River Falls, WI; Project Number: 075–HD067/WI39–Q001–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 12, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.
• *Regulation:* 24 CFR 891.100(d).
Project/Activity: White Cone Senior Apartments, White Cone, AZ; Project Number: 123–EE077/AZ20–S001–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 13, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.
• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Rockbridge Meadows Group Home, Lexington, VA; Project Number: 051–HD100/VA36–Q011–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 5, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Peake Lane Group Home, Portsmouth, VA; Project Number: 051–HD091/VA36–Q001–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 5, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: The Presbyterian Home at Stafford, Stafford Township, NJ; Project Number: 035–EE037/NJ39–S991–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 16, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Southbury Elderly Housing, Southbury, CT; Project Number: 017–EE068/CT26–S011–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 19, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Marysville III, Marysville, OH; Project Number: 043–EE074/OH16–S011–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 19, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: GIBB-Springfield Village, Springfield, FL; Project Number: 063–HD018/FL29–Q011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 26, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Arlington Cooperative Apartments, Baltimore, MD; Project Number: 052–EE040/MD06–S011–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 30, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Myrtle Davis Senior Complex, Milwaukee, WI; Project Number: 075–EE095/WI39–S001–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 30, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Cutler Street, Providence, RI; Project Number: 016–HD034/RI43–Q011–001

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 30, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Highbridge Senior Housing, Bronx, NY; Project Number: 012–EE248/NY36–S981–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance

funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 3, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. The project experienced delays due to litigation involving the city's ability to convey the site to the owner corporation for development purposes.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Falcon Park III, Warner Robins, GA; Project Number: 061HD067/GA06–Q981–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. The project experienced delays due to the need to obtain a new contractor twice.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Cedars II, Lebanese Community Housing, Methuen, MA; Project Number: 023–EE109/MA06–S991–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 29, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. The project was delayed due to the sponsor's extensive efforts to obtain secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Mount Ephraim Senior Housing, Mt. Ephraim, NJ; Project Number: 035–EE041/NJ39–S001–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 24, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding to cover the development cost shortfall from other sources. The project is economically designed and is comparable in cost to similar projects developed in the area. The project was delayed due to the need to resolve cost issues and additional time was needed for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Lincoln Street Apts., Marlboro, MA; Project Number: 023–HD162/MA06–Q991–010.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 30, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. The project was delayed due to the sponsor's extensive efforts to obtain secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Cross Street, Wellesley, MA; Project Number: 023–HD159/MA06Q991–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 30, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. The project was delayed due to the sponsor's extensive efforts to obtain secondary financing and the revision of the plans and specs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Mountain View Homes, McConnellsburg, PA; Project Number: 033–EE106/PA28–S001–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital

advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 30, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. The project was delayed due to the need to resolve issues regarding a shortage of potable water and the protection of wetlands areas at the site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Stephen's County Village, Gulfport, MS; Project Number: 065–EE031/MS26–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 1, 2003.

Reason Waived: The project incurred delays because one of the original sponsors withdrew, a new site needed to be located, and sewage capacity issues with the city needed additional time to resolve.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Las Golondrinas, San Jose, CA; Project Number: 121–EE138/CA39–S001–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 1, 2003.

Reason Waived: The project was delayed due to contamination remediation and rezoning issues with the city of San Jose.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: South Hill Elderly, South Hill, VA; Project Number: 051–EE962/VA36–S981–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 2, 2003.

Reason Waived: The project was delayed because the sponsor needed additional time to locate another site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Kennedy Institute II, Berwyn Heights, MD; Project Number: 000–HD045/MD39–Q991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 9, 2003.

Reason Waived: A change in consultants caused the project to experience delays.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Simpson Mid-Town Apts., Philadelphia, PA; Project Number: 034–EE107/PA26–S001–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 9, 2003.

Reason Waived: The project was delayed due to various site and legal issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Housing Opportunity Corporation, North Providence, RI; Project Number: 016–EE035/RI43–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 9, 2003.

Reason Waived: The project was delayed because the sponsor needed additional time to locate another site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pelican Lake Housing Corporation, Eagle River, WI; Project Number: 075–HD066/WI39–Q001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2003.

Reason Waived: Additional time was needed for the sponsor to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Bradstreet Avenue Residence, Revere, MA; Project Number: 023–HD140/MA06–Q981–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2003.

Reason Waived: Changes in the development team required by HUD caused the project to be delayed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Luther Ridge, Middletown, CT; Project Number: 017–EE053/CT26–S991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2003.

Reason Waived: The project had been delayed pending resolution of issues involving its condominium structure.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Snowden House, Dorchester, MA; Project Number: 023–EE115/MA06–S991–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2003.

Reason Waived: A change in general contractors caused the project to experience delays.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: TBD, East Providence, RI, Project Number: 016–HD033/RI43–Q001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2003.

Reason Waived: The project was delayed due to lengthy ongoing litigation involving a zoning variance for the site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pathways, Greenwich, CT; Project Number: 017–HD022/CT26–Q981–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2003.

Reason Waived: The project was delayed due to litigation and problems with the Town of Greenwich Planning and Zoning Commission.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Roberts Street Apts., West Warwick, RI; Project Number: 0016–HD031/RI43–Q001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 18, 2003.

Reason Waived: The project was delayed because additional time was needed for the sponsor to complete and HUD to process the firm commitment.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: South Daytona Good Samaritan Housing, South Daytona Beach, FL; Project Number: 067–EE111/FL29–S001–011.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 22, 2003.

Reason Waived: Delays were incurred by the project due to the sponsor/owner's lengthy efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ghost Creek Housing, River Falls, WI; Project Number: 075–HD067/WI39–Q001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 22, 2003.

Reason Waived: Additional time was needed for the sponsor/owner to rebid the project and select a new contractor. Additional time was also needed for the HUD field office to review the revised firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Venable Apartments at Stadium Place, Baltimore, MD; Project Number: 052–EE036/MD39–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 25, 2003.

Reason Waived: Additional time was needed for the HUD field office to process the firm commitment

application and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hillsborough County VOA Living Center III, Tampa, FL; Project Number: 067–HD080/FL29–Q001–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 28, 2003.

Reason Waived: Additional time was needed for additional funds to be received.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pine Street Inn, Dorchester, MA; Project Number: 023–EE098/MA06–S091–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 29, 2003.

Reason Waived: The sponsor/owner had to locate an alternate site, and the HUD field office had to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Mount St. Mary's, Tonawanda, NY; Project Number: 014–EE198/NY06–S001–004.

Nature Of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 8, 2003.

Reason Waived: The sponsor needed additional time to resolve a funding shortfall for the additional 10 units being constructed with the Section 202 units.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ormont Court, New Haven, CT; Project Number: 017–EE059/CT26–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 8, 2003.

Reason Waived: Additional time was needed for the owner to resolve a site issue and to obtain HOME funds from the city.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Larchmont Residence, Dorchester, MA, Project Number: 023–HD166/MA06–Q001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 8, 2003.

Reason Waived: Additional time was needed for the HUD field office to process the firm commitment application and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cottonwood Manor VII, Cottonwood, AZ; Project Number: 123–EE075/AZ20–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 8, 2003.

Reason Waived: The project had to be redesigned and reengineered in order to obtain the city's approval. Additional time was needed for the sponsor to locate additional funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ida B. Wells Apartments, Hartford, CT; Project Number: 017–EE058/CT26–S001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 8, 2003.

Reason Waived: An identity of interest was identified, and the sponsor needed additional time to restructure the development team.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Andrews of Jennings Phase II, Jennings, MO; Project Number: 085–EE049/MO036–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 8, 2003.

Reason Waived: Additional time was needed for the owner to address deficiencies found in the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing

and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Villa Seton, Port St. Lucie, FL; Project Number: 067–EE107/FL29–S001–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 8, 2003.

Reason Waived: The project was delayed due to the sponsor's efforts to obtain amendment funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Nonantum Village Place, Newton, MA; Project Number: 023–EE126/MA06–S001–011.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 8, 2003.

Reason Waived: Additional time was needed for the HUD field office to process the firm commitment application and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Brendan Senior Housing, Chicago, IL; Project Number: 071–EE159/IL06–S001–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 9, 2003.

Reason Waived: The project had to be redesigned after the city withdrew its funding for the development of a senior center on the first floor of the project. The HUD field office needed additional time to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Bridgeway Apartments II, Picayune, MS; Project Number: 065–HD025/MS26–Q001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 14, 2003.

Reason Waived: Delays were incurred by the owner in preparing the initial closing package because a consultant was ill.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Trinity Terrace, Fort Washington, MD; Project Number: 000–EE054/MD39–S001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 14, 2003.

Reason Waived: Additional time was needed to resolve issues regarding the ground lease for the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: North Capitol at Plymouth, Washington, DC; Project Number: 000–EE053/DC39–S001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 19, 2003.

Reason Waived: The project was delayed due to additional time needed by the sponsor to obtain supplemental funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Vermont Seniors, Los Angeles, CA; Project Number: 122–EE148/CA16–S981–017.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 22, 2003.

Reason Waived: Delays were incurred by the project because the sponsor needed to obtain secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Phoenix Volunteers of American Elderly Housing, Phoenix, AZ; Project Number: 123–EE078/AZ20–S001–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 5, 2003.

Reason Waived: Delays were incurred by the project because the sponsor was waiting for the city and state to approve HOME funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000

• *Regulation:* 24 CFR 891.165.

Project/Activity: National Church Residence (NCR) of Harborcreek,

Harborcreek, PA; Project Number: 033–EE105/PA28–S001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 5, 2003.

Reason Waived: Delays were encountered by the project because it had to be redesigned due to contamination discovered after a geotechnical evaluation of the site. Additional time was needed for the sponsor to secure final approval from the local planning commission.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Village Supervised Apartments, Hamilton Township, NJ; Project Number: 035–HD034/NJ39–Q961–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 10, 2003.

Reason Waived: The sponsor had to change sites in order to meet HUD's accessibility requirements.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Riley House, Hyde Park, MA; Project Number: 023–EE111/MA06–S991–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 11, 2003.

Reason Waived: Additional time was needed for the HUD field office to process the firm commitment application and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Orchardfield Street Residence, Dorchester, MA; Project Number: 023–HD154/MA06–Q991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 19, 2003.

Reason Waived: Additional time was needed for the HUD field office to process the firm commitment application and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Maui Kokua, Kahului, HI; Project Number: 140–HD023/HI110–Q001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 19, 2003.

Reason Waived: The project was delayed because approval from Headquarters was needed to change one of the sites and separate the funding for two sites.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Creekside Gardens, Paso Robles, CA; Project Number: 122–EE162/CA16–S991–013.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 23, 2003.

Reason Waived: Additional time was needed for the HUD field office to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Rhinelander Disabled Housing, Rhinelander, WI; Project Number: 075–HD063/WI39–Q991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 26, 2003.

Reason Waived: Delays were experienced by the project due to various problems with site control and obtaining an acceptable site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Rochester III Elderly Housing, Rochester, NH; Project Number: 024–EE063/NH36–S011–002.

Nature of Requirement: Section 891.205 provides that Section 202 project owners be single-purpose corporations.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 14, 2003.

Reason Waived: One owner entity would result in better utilization of the site by allowing two projects on one site. Also, the owner for Rochester III Elderly Housing had not yet been established.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Lincoln Unity Apartments, West Hamlin, WV; Project Number: 045–EH098.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons; that is, households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 9, 2003.

Reason Waived: The Charleston Multifamily Program Center requested permission to waive the age requirements of the subject property. The owner/management agent of the subject project had requested permission to waive the elderly and low-income requirements to alleviate the current occupancy and financial problems at the property. The property will be allowed to rent to the non-elderly between the ages of 55 and 62 years and allow the applicants to meet the low-income eligibility requirements. Providing for a waiver to the elderly and low-income restrictions will allow the owner additional flexibility to rent vacant units. The owner will have the flexibility to offer units to the non-elderly, low-income applicants, and therefore, will be able to achieve full occupancy, and the project will not fail. This waiver is effective for one year from date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000; telephone: (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Sawtooth Ridges, Grand Marais, MN; Project Number: 092–EE007.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons; that is, households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 12, 2003.

Reason Waived: The Minneapolis-St. Paul Multifamily Hub requested permission to waive the age requirements of the subject property. The owner/management agent of the subject project had requested permission to waive the elderly and low-income requirements to alleviate the current occupancy and financial problems at the property. The property will be allowed to rent to the non-elderly between the ages of 55 and 62 years and allow the applicants to meet the low-income eligibility requirements. Providing for a waiver to the elderly and low-income restrictions will allow the owner additional flexibility to rent vacant units. The owner will have the flexibility to offer units to the non-elderly, low-income applicants, and therefore, will be able to achieve full occupancy, and the project will not fail. This waiver is effective for one year from date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000; telephone: (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Red Lion Elderly Housing, Randolph, VT; Project Number: 024–EE034.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons; that is, households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 14, 2003.

Reason Waived: The Manchester Multifamily Program Center requested permission to waive the age requirements of the subject property. The owner/management agent of the subject project had requested permission to waive the elderly and low-income requirements to alleviate the current occupancy and financial problems at the property. The property will be allowed to rent to the non-elderly between the ages of 55 and 62 years and allow the applicants to meet the low-income eligibility requirements. Providing for a waiver to the elderly and low-income restrictions will allow the owner additional flexibility to rent vacant units. The owner will have the flexibility to offer units to the non-elderly, low-income applicants, and therefore, will be able to achieve full occupancy and the project will not fail. This waiver is effective for one year from date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000; telephone: (202) 708–3730.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 761.30.

Project/Activity: Extension request by the White Mountain Apache Housing Authority for their FY 2000 Indian Housing Drug Elimination Program (IHDEP) Grant.

Nature of Requirement: Section 761.30 establishes a provision whereby grantees can request only a six-month extension beyond the original grant period to complete their grant.

Reason Waived: All project work on the grant was stopped as the result of the Chediski and Rodeo fires on the Reservation. The police department resources assisting with the grant implementation were redirected to emergency assistance efforts related to the fire. As a result, the project was delayed.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 9, 2003.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202–5733; telephone: (303) 675–1625.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Housing Authority of the city of Loveland (CO034), Loveland, CO.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 14, 2003.

Reason Waived: HA requested a waiver (extension of time) to file its

audited financial data. Waiver request indicates that several attempts were made in advance of the due date to communicate with the HA's external auditor regarding the audited submission. The audited data was not submitted by the external auditor in a timely manner.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: HA of the city of Buhl (ID010), Buhl, ID.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 27, 2003.

Reason Waived: The Buhl Housing Authority (BHA) requested a waiver (extension of time) to submit its audited submission. The PHA received a Late Presumptive Failure (LPF) that resulted in a score of zero out of 30 points. HA encountered system problems in its attempt to submit its audited FASS Information.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Christian County HA (IL038), Pana, IL.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: William Russell, Deputy Assistant Secretary for Public Housing and Voucher Programs.

Date Granted: June 23, 2003.

Reason Waived: HA requested a waiver (extension of time) to submit its unaudited financial data. HA indicated that the transition to a new Executive Director and need to hire a fee accountant to reconstruct the financial Records affected the HA's ability to submit financial data prior to the November 30, 2002, due date.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Housing Authority of Corbin (KY010), Corbin, KY.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 2003.

Reason Waived: The Louisville Field Office requested a waiver (extension of time) for submission of the HA's audited financial data. HA received a Late Presumptive Failure (LPF) and received a score of zero out of 30 points. HA's external auditor was responsible for the financial submission and failed to submit the data to the Real Estate Assessment Center (REAC) in a timely manner. The auditor has since been issued a Limited Denial of Participation (LDP) for his failure to submit financial data for this period as well as for his failure to submit timely data to REAC in prior years.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Housing Authority of Newport (KY015), Newport, KY.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 2003.

Reason Waived: The Louisville Field Office requested a waiver (extension of time) for submission of the HA's audited financial data. HA received a Late Presumptive Failure (LPF) and received a score of zero out of 30 points. HA's external auditor was responsible for the financial submission and failed to submit the data to the Real Estate Assessment Center (REAC) in a timely manner. The auditor has since been issued a Limited Denial of Participation (LDP) for his failure to submit financial data for this period as well as for his failure to submit timely data to REAC in prior years.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Housing Authority of Whitesburg (KY044), Whitesburg, KY.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 2003.

Reason Waived: The Louisville Field Office requested a waiver (extension of time) for submission of the HA's audited financial data. HA received a Late Presumptive Failure (LPF) and received a score of zero out of 30 points. HA's external auditor was responsible for the financial submission and failed to submit the data to the Real Estate Assessment Center (REAC) in a timely manner. The auditor has since been issued a Limited Denial of Participation (LDP) for his failure to submit financial data for this period as well as for his failure to submit timely data to REAC in prior years.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Campbellsville Housing and Redevelopment Authority (KY047), Campbellsville, KY.

Nature of Requirement: Section 902.33(c) concerns reporting

compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 2003.

Reason Waived: The Louisville Field Office requested a waiver (extension of time) for submission of the HA's audited financial data. HA received a Late Presumptive Failure (LPF) and received a score of zero out of 30 points. HA's external auditor was responsible for the financial submission and failed to submit the data to the Real Estate Assessment Center (REAC) in a timely manner. The auditor has since been issued a Limited Denial of Participation (LDP) for his failure to submit financial data for this period as well as for his failure to submit timely data to REAC in prior years.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

- *Regulation:* 24 CFR 902.33(c).

Project/Activity: Housing Authority of Lawrence (KY086), Louisa, KY.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates: Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 2003.

Reason Waived: The Louisville Field Office requested a waiver (extension of time) for submission of the HA's audited financial data. HA received a Late Presumptive Failure (LPF) and received a score of zero out of 30 points. HA's external auditor was responsible for the financial submission and failed to submit the data to the Real Estate Assessment Center (REAC) in a timely manner. The auditor has since been issued a Limited Denial of Participation (LDP) for his failure to submit financial data for this period as well as for his failure to submit timely data to REAC in prior years.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

- *Regulation:* 24 CFR 902.33(c).

Project/Activity: Housing Authority of Irvington (KY101), Irvington, KY.

Nature of Requirement: Section 902.33(c) reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 2003.

Reason Waived: The Louisville Field Office requested a waiver (extension of time) for submission of the HA's audited financial data. HA received a Late Presumptive Failure (LPF) and received a score of zero out of 30 points. HA's external auditor was responsible for the financial submission and failed to submit the data to the Real Estate Assessment Center (REAC) in a timely manner. The auditor has since been issued a Limited Denial of Participation (LDP) for his failure to submit financial data for this period as well as for his failure to submit timely data to REAC in prior years.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

- *Regulation:* 24 CFR 902.33(c).

Project/Activity: Housing Authority of Scottsville (KY104), Scottsville, KY.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 2003.

Reason Waived: The Louisville Field Office requested a waiver (extension of time) for submission of the HA's audited financial data. HA received a Late Presumptive Failure (LPF) and received a score of zero out of 30 points. HA's external auditor was responsible for the financial submission and failed to submit the data to the Real Estate Assessment Center (REAC) in a timely manner. The auditor has since been issued a Limited Denial of Participation (LDP) for his failure to submit financial data for this period as well as for his failure to submit timely data to REAC in prior years.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

- *Regulation:* 24 CFR 902.33(c).

Project/Activity: Housing Authority of the Town of Simmesport (LA072), Simmesport, LA.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates: Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: William Russell, Deputy Assistant Secretary for Public Housing and Voucher Programs.

Date Granted: June 23, 2003.

Reason Waived: HA requested a waiver (extension of time) to submit its audited financial data. HA experienced managerial problems during 2002. The Louisiana Legislative Auditor issued an audit report concerning potential fraudulent actions by the previous Executive Director. The HA is working to correct problems noted in the Legislative Auditor's report and will not be able to complete its 9/30/03 due date submission. HA granted until December 1, 2003, to submit its data.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

- *Regulation:* 24 CFR 902.33(c).

Project/Activity: Bernalillo County Housing Department (NM057), Albuquerque, NM.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula Blunt, for Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 18, 2003.

Reason Waived: The HA requested a waiver (extension of time) to submit its audited financial data. The Bernalillo County Housing Department is a component of Bernalillo County. The HA cannot submit its audited financial data until the County completes its audit. This issue has hindered the HA's ability to submit its audited report in a timely manner.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Hudson Housing Authority (NY061), Hudson, NY.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 9, 2003.

Reason Waived: HA requested a waiver (extension of time) to file its Management data. HA received a Late Presumptive Failure (LPF) score of zero out of 30 points and Troubled Designation. The HA's request indicates that significant criminal activity on the premises caused on August 22, 2002, and November 26, 2002, created a distraction during the period the Management Operations Assessment Sub System (MASS) submission was due. HA also indicated that it changed its email addresses, but did not notify REAC of the change and did not receive late notices sent by REAC.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Town of Johnston Housing Authority (RI009), Johnston, RI.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 9, 2003.

Reason Waived: The HA's appeal request was treated as a waiver (extension of time) to file its financial data. According to the HA's request, its external auditor was unable to complete the financial audit in a timely manner. The audited financial data was due September 30, 2002, but submitted to REAC on November 13, 2002. A memorandum from the external auditor to REAC indicated that while the HA fully cooperated during the course of the audit, the auditor was at fault for the late filing.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: West Warwick Housing Authority (RI015), West Warwick, RI.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 5, 2003.

Reason Waived: HA requested a waiver (extension of time) to submit its financial data. According to the HA's request, its external auditor was unable to complete the financial audit in a timely manner. The audited financial statements were due September 30, 2002, but were submitted to REAC on January 8, 2003. A memorandum from the external auditor to REAC indicates that while the HA fully cooperated during the course of the audit, the auditor was at fault for the late filing because of his busy schedule.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Maryville Housing Authority (TN065), Maryville, TN.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: William Russell, Deputy Assistant Secretary for Public Housing and Voucher Programs.

Date Granted: June 23, 2003.

Reason Waived: HA requested a waiver (extension of time) to submit its audited financial data. The request indicates that the HA procured an auditor for fiscal year ending December 31, 2002. In March 2003, the auditor withdrew from the audit engagement, citing a loss of staff. After additional efforts, the HA was able to engage an auditor who will conduct the financial audit for FY2002.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Housing Authority of the city of Palacios TX.

Nature of Requirement: Section 902.33(c) concerns reporting compliance dates. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 30, 2003.

Reason Waived: HA requested a waiver (extension of time) to submit its audited financial data. The waiver request indicates that the HA encountered a significant delay in engaging an independent audit firm to conduct its financial audit for the fiscal year ended September 30, 2001. HA provided correspondence that indicated many external audit firms were unable to conduct the work due to workload considerations. The HA was eventually able to engage an auditor to conduct the audits for the fiscal year ended September 30, 2001.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency

Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone: (202) 708–4932.

• *Regulation:* 24 CFR 1000.336.

Project/Activity: The Pueblo of Zuni tribe requested permission to submit a challenge to the data used in computing their Fiscal Year (FY) 2003 Indian Housing Block Grant (IHBG) under the Native American Housing Assistance and Self-Determination Act of 1996.

Nature of Requirement: Section 1000.336 establishes a provision that a tribe, a tribally designated housing entity (TDHE), or HUD may request a waiver of the deadline to challenge data used to compute the IHBG formula allocation.

Reason Waived: Tribes did not receive the data to compute their "needs" variables prior to the deadline to challenge the data.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 4, 2003.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202–5733; telephone: (303) 675–1625.

[FR Doc. 03–28134 Filed 11–7–03; 8:45 am]

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Federal Register

Monday,
November 10, 2003

Part IV

Department of Education

South Carolina Department of Health and Environmental Control; Written Findings and Compliance Agreement Under the Infants and Toddlers With Disabilities Program—Part C of the Individuals With Disabilities Education Act; Notice

DEPARTMENT OF EDUCATION

South Carolina Department of Health and Environmental Control; Written Findings and Compliance Agreement Under the Infants and Toddlers With Disabilities Program—Part C of the Individuals With Disabilities Education Act

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of written findings and compliance agreement.

SUMMARY: Section 457 of the General Education Provisions Act (GEPA) authorizes the U.S. Department of Education (Department) to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements and that a compliance agreement is a viable means of bringing about such compliance. On September 9, 2003, the Department entered into a compliance agreement with the South Carolina Department of Health and Environmental Control (DHEC). Under section 457(b)(2) of GEPA, the written findings and compliance agreement must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jacquelyn Twining-Martin, U.S. Department of Education, Office of Special Education Programs, 330 C Street, NW., room 3316, Washington, DC 20202. Telephone (202) 205–8258.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Under Part C of the Individuals with Disabilities Education Act (Part C), the Department provides funds to States to, and the State must then, "maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families." 20 U.S.C. 1433, 1435(a)(2), 1437(a)(3)(A); 34 CFR 303.1 and 303.160. Early intervention services are services that are, among other things, "designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas—(i) physical development; (ii) cognitive development; (iii) communication development; (iv) social or emotional development; or (v) adaptive development"; "are provided by qualified personnel"; "to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate"; and "are provided in conformity with an individualized family service plan adopted in accordance with section 1436 of this title." 20 U.S.C. 1432(4)(C), (F), (G) and (H).

On January 6, 2003, following an on-site monitoring visit to South Carolina (SC) in February 2002 by the Department's Office of Special Education Programs (OSEP), OSEP issued a final monitoring report that documented non-compliance by the SC DHEC with Part C. The monitoring report identified DHEC's failure to meet its responsibilities under Part C. Specifically, the monitoring report identified DHEC's failure to:

(1) Meet its general supervision responsibilities and monitor for compliance with regard to all requirements of Part C;

(2) Ensure that a coordinated child find and public awareness system results in the identification of all eligible infants and toddlers with disabilities;

(3) Ensure that all infants and toddlers referred to Part C receive timely and comprehensive evaluations in all five developmental areas such that evaluations and assessments are completed within 45 days of referral to enable the initial Individualized Family Service Plan (IFSP) team meeting to be convened in that time period;

(4) Ensure that all early intervention services needed by an eligible infant or toddler with a disability and the child's family are identified on the IFSP and provided in a timely manner; and

(5) Conduct timely and content-appropriate transition planning including transition meetings for children who are transitioning from Part C.

On April 19, 2002, DHEC requested to enter into a compliance agreement with the Department. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). Before entering into a compliance agreement, the Department must hold a hearing at which the recipient, individuals affected by any potential compliance agreement, including infants and toddlers with disabilities and their families or other representatives, and other interested parties are invited to participate. In that hearing, the recipient has the burden of persuading the Department that full compliance with the applicable requirements of law is not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance in no more than three years. 20 U.S.C. 1234f(b)(1), (c). If, on the basis of all the evidence available to it, the Secretary determines that the recipient has met that burden, the Secretary is to make written findings to that effect and publish those findings, together with the substance of the compliance agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

At a May 1, 2003 hearing conducted by Department officials, witnesses representing DHEC, families of infants and toddlers with disabilities, and other concerned organizations (including State agencies and other stakeholders) testified on the question of whether the Department should grant DHEC's request to enter into a compliance agreement. Additional written testimony was submitted to the Department by families of infants and toddlers with disabilities and children with disabilities and concerned organizations both prior to and after the public hearing. On September 9, 2003, the Department, after reviewing all oral and written testimony submitted and other relevant materials, issued the attached Written Findings and Decision (Decision) of the Secretary as required under 20 U.S.C. 1234f(b)(2). As noted in the Decision, the Department has determined that DHEC has met its burden of establishing the following: (1) That compliance by DHEC with Part C is not feasible until a future date, and (2) that DHEC will be able to carry out the terms and conditions of the compliance agreement it has signed (Compliance Agreement) and will come into full compliance with Part C within three years of the date of the Decision. During the effective period of the Compliance Agreement, which expires three years from the date of the Decision, DHEC will be eligible to receive Part C funds as long as it complies with all the terms and conditions of the Compliance Agreement.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the text of the Secretary's Decision is set forth as Appendix A and the Compliance Agreement is set forth as Appendix B of this notice.

Electronic Access to This Document

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(Authority: 20 U.S.C. 1234c, 1234f, 1431 through 1445)

Dated: October 22, 2003.

Troy R. Justesen,

Acting Assistant Secretary for Special Education and, Rehabilitative Services.

Appendix A—Text of the Written Findings and Decision of the Secretary of Education

I. Introduction

The United States Department of Education (Department) has determined, pursuant to 20 U.S.C. 1234c, that the South Carolina Department of Health and Environmental Control (DHEC) has failed to comply substantially with the requirements of Part C of the Individuals with Disabilities Education Act (Part C or IDEA), 20 U.S.C. 1401, 14311–1445.[1] On January 6, 2003, the Department issued a final monitoring report for South Carolina (SC) that documented DHEC's failure to comply with Part C in its provision of early intervention services to infants and toddler with disabilities and their families. Specifically, DHEC has failed to:

(1) Meet its general supervision responsibilities and monitor for compliance with regard to all requirements of Part C, including appropriately administering the Part C program, monitoring State agencies, institutions, organizations and private providers that are part of the Part C system, and enforcing obligations against and providing training and technical assistance to all such entities and individuals, when identified as part of a required improvement strategy;

(2) Ensure that a coordinated child find system results in the identification of all eligible infants and toddlers with disabilities and that public awareness materials about the infants and toddlers with disabilities program are made available to the public, including rural, minority and underrepresented populations;

(3) Ensure that all infants and toddlers referred to Part C receive timely and comprehensive evaluations in all five developmental areas such that evaluations and assessments are completed within 45 days of referral to enable the initial Individualized Family Service Plan (IFSP) team meeting to be convened in that time period;

(4) Ensure that all early intervention services needed by an eligible infant or toddler with a disability and the child's family are identified on the IFSP and provided in a timely manner; and

(5) Conduct timely and content-appropriate transition planning including transition meetings for children who are transitioning from Part C.

As a consequence, the Department concluded, pursuant to the General Education Provisions Act (GEPA) at 20 U.S.C. 1234c, that DHEC is not complying with Part C.

On April 19, 2002, DHEC requested the Department enter into a compliance agreement with DHEC as a means of ensuring a continued flow of Part C funds to South Carolina while a structured plan to come into full compliance with Part C is implemented. On May 1, 2003, Department officials conducted a public hearing in South Carolina in accordance with the GEPA requirements of 20 U.S.C. 1234f(b), at which oral and written testimony were received. Witnesses representing DHEC, affected families of infants and toddlers with disabilities, and other concerned organizations (including State stakeholders) testified at this hearing on the question of whether the Department should grant DHEC's request to enter into a Compliance Agreement. Additional written testimony was submitted to the Department by affected families, and concerned organizations both prior to and after the public hearing. The Department has reviewed all oral and written testimony submitted, the Compliance Agreement DHEC has signed, and other relevant materials.[2] On the basis of this evidence, the Department concludes, and issues these written findings as required by 20 U.S.C. 1234f(b)(2), that DHEC has met its burden of establishing the following: (1) That compliance by DHEC with Part C is not feasible until a future date, and (2) that DHEC will be able to carry out the terms and conditions of the Compliance Agreement it has signed and will come into full compliance with Part C within three years of the date of this decision. During the effective period of the Compliance Agreement, which expires three years from the date of this decision, DHEC will be eligible to receive Part C funds as long as it complies with all the terms and conditions of the Agreement.

II. Legal Basis for Compliance Agreement: Requirements Under Part C and Under GEPA

A. Part C of the Individual With Disabilities Education Act

Part C was passed in response to Congress' finding that "there is an urgent and substantial need to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay." 20 U.S.C. 1431(a)(1). Congress established Part C "to provide financial assistance to States to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families."[3] 20 U.S.C. 1441(b)(1). Early intervention services are defined as "developmental services that":

(A) Are provided under public supervision;

(B) Are provided at no cost except where Federal or State law provides for

[1] Under the Department of Education Organization Act (DEOA), Congress transferred the administration of the IDEA from the Commissioner of Education to the Secretary of Education. 20 U.S.C. 3441(a)(1) and (a)(2)(H). Section 207 of the DEOA, 20 U.S.C. 3417, in turn delegates responsibility for IDEA to the Assistant Secretary for Special Education and Rehabilitative Services. The Office of Special Education Programs (OSEP), which is part of the Office of Special Education and Rehabilitative Services, is the office within the Department that is primarily responsible for administering Part C of the IDEA. 20 U.S.C. 1402(a).

[2] A copy of the Compliance Agreement is appended to, and incorporated into, this decision as Attachment A.

[3] An "infant or toddler with a disability" "(A) means an individual under 3 years of age who needs early intervention services because the individual (i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or (ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and (B) may also include, at a State's discretion, at-risk infants and toddlers." 20 U.S.C. 1432(5).

a system of payments by families, including a schedule of sliding fees;

(C) Are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas—(i) physical development; (ii) cognitive development; (iii) communication development; (iv) social or emotional development; or (v) adaptive development;

(D) Meet the standards of the State in which they are provided, including the requirements of this part;

(E) Include [a list of early intervention services];

(F) Are provided by qualified personnel';

(G) To the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

(H) Are provided in conformity with an individualized family service plan (IFSP) adopted in accordance with section 636 (20 U.S.C. 1436). 20 U.S.C. 1432(4); 34 CFR 303.12.

In order to ensure that all early intervention services are provided in compliance with Part C, a State must ensure that the Part C requirements regarding general supervision (including monitoring), child find and public awareness, timely evaluations and assessments, IFSP development, timely provision of early intervention services, and transition planning are met.

The lead agency's general supervision responsibilities include monitoring, ensuring correction and enforcement, providing technical assistance and training and ensuring the provision of procedural safeguards through the due process and State complaint procedures. 20 U.S.C. 1435(a)(1)(A); 34 CFR 303.500 through 303.512. The lead agency is required to ensure that all programs and activities used by the State to carry out Part C, whether or not they receive Part C funds, are monitored for compliance with Part C requirements and that interagency agreements are in place to ensure that services are provided in a timely manner. 20 U.S.C. 1435(a)(1)(A); 34 CFR 303.501 and 303.523 through 303.528. When the lead agency determines that program providers and other agencies, institutions and organizations that are part of the Part C system in a State are not in compliance, Part C requires the lead agency to enforce the requirements of Part C and correct deficiencies that are identified through monitoring and its general supervision authority. 20 U.S.C. 1435(a)(1)(A); 34 CFR 303.501(b)(2) and (4). The lead agency is also responsible for providing technical assistance and training to agencies, institutions and organizations that administer the Part C program. 20 U.S.C. 1435(a)(1)(A); 34 CFR 303.501(b)(3). Part C requires that there be a single line of responsibility and clear interagency guidelines to ensure that one agency, the lead agency, is responsible for administering Part C in the State. 20 U.S.C. 1435(a)(1)(A); 34 CFR 303.500. General supervision has been a challenge for DHEC due to the large number of agencies that provide some part of Part C services and the number of private contractors.

The Part C general supervision requirement must be read in conjunction with DHEC's responsibility under GEPA at 20 U.S.C. 1232d(b)(3), to adopt and use proper methods of administering the Part C program, including, among other requirements: (1) Monitoring of agencies, institutions, and organizations responsible for carrying out Part C; (2) the enforcement of the obligations imposed on those agencies, institutions, and organizations under Part C; (3) providing technical assistance, where necessary, to such agencies, institutions, and organizations; and (4) the correction of deficiencies in program operations that are identified through monitoring or evaluation.

Other Part C requirements include ensuring that all infants and toddlers with disabilities and their families: Are timely referred into the program, are assigned a single service coordinator, are evaluated in all five developmental areas, and, if determined eligible, have IFSPs timely developed that address all content requirements, are timely provided those early intervention services and receive timely transition meetings and plans as they exit the program. This system is intended to be seamless so that an infant and toddler with a disability and the family receive all appropriate services to support them. DHEC's failure to ensure the provision of key components of the system have led to waiting lists for evaluations and assessments and early intervention services.

B. The Department's Authority To Enter Into a Compliance Agreement

If a State fails to comply substantially with the requirements of Part C, the IDEA authorizes the Department to withhold funds from that State or refer the matter to the Department of Justice. 20 U.S.C. 1416(a) and 1442. GEPA provides the Department with additional options for dealing with a grant recipient that it concludes is "failing to comply substantially with any requirements of law applicable to such funds." 20 U.S.C. 1234c. These remedies include issuing a cease and desist order. 20 U.S.C. 1234c. As an alternative to withholding funds, issuing a cease and desist order, or referral to the Department of Justice, the Department may enter into a Compliance Agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. In this instance, and at DHEC's request, the Department has decided to address DHEC's failure to comply substantially with the requirements of Part C through a Compliance Agreement.

The purpose of a Compliance Agreement is "to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). Before entering into a Compliance Agreement, the Department must hold a hearing at which the recipient, affected infants and toddlers with disabilities and their parents or their representatives, and other interested parties are invited to participate. In that hearing, the recipient has the burden of persuading the Department that full compliance with the applicable requirements of law is not feasible until a future date and that a Compliance Agreement is a viable means for bringing about such compliance in no more than three years. 20 U.S.C. 1234f(b)(1). If, on the basis of all the evidence available to it, the Secretary determines that the recipient has met that burden, he is to make written findings to that effect and publish those findings, together with the substance of the Compliance Agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

A Compliance Agreement must set forth an expiration date not later than 3 years from the date of the Secretary's written findings under 20 U.S.C. 1234f(b)(2), by which time the recipient must be in full compliance with all program requirements. In addition, the Compliance Agreement must contain the terms and conditions with which the recipient must comply during the period that the Agreement is in effect. 20 U.S.C. 1234f(c). If the recipient fails to comply with any of the terms and conditions of the Compliance Agreement, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including withholding of funds, issuing of a cease and desist order, or referring the matter to the Department of Justice. 20 U.S.C. 1234f(d).

III. Analysis of DHEC'S Ability To Meet the Requirements of the Compliance Agreement

A. How the Department Determines Whether a Compliance Agreement Is Appropriate

In determining whether it is appropriate to enter into a Compliance Agreement with DHEC, the Department must first determine two issues. First, the Department determines whether compliance by DHEC with Part C (including the requirements concerning general supervision including monitoring, child find and public awareness, timely and comprehensive evaluations, complete IFSP development, timely provision of early intervention services, and transition from Part C) is not immediately feasible. 20 U.S.C. 1234f(b). Second, the Department determines whether DHEC will be able to come into compliance with Part C within a period of no more than three years. If the Department cannot answer these questions in the affirmative, then it is inappropriate for the Department to enter into a Compliance Agreement between the Department and DHEC under 20 U.S.C. 1234f. In arriving at the terms of the Compliance Agreement, DHEC must not only come into full compliance by the end of the effective period of the Compliance Agreement, it must also make steady and measurable progress toward the Agreement's objectives while it is in effect.

B. DHEC Cannot Immediately Come Into Compliance With Part C Requirements

DHEC's failure to comply with the requirements of Part C, as documented in OSEP's January 6, 2003 monitoring report and acknowledged by DHEC, is caused by a number of factors including the fact that early intervention services in South Carolina are provided through complex interagency and private contractor structures, and, as a result, cannot be corrected immediately. The witnesses who testified at the public hearings and the Department's experience in monitoring DHEC's early intervention program, BabyNet, provide compelling support for this conclusion.

1. DHEC Cannot Come Into Compliance Immediately With Those Part C Requirements That Were the Subject of OSEP's Findings

As noted below and confirmed through the testimony of DHEC, parents and providers, DHEC is not in compliance now, and cannot immediately come into compliance, with the following specific Part C requirements that were findings in OSEP's January 6 2003 report:

—Employing proper methods of administering the Part C program, including monitoring all agencies, institutions, providers, and organizations used by SC to provide Part C services, enforcing Part C requirements against these entities and providing training and technical assistance;

—Ensuring a coordinated child find system and that public awareness materials are made available to the public;

—Ensuring that all infants and toddlers who are referred to Part C are evaluated in all five developmental areas within the required time frame;

—Ensuring that all eligible infants and toddlers with disabilities have IFSPs that are developed with the required content, the initial IFSP meeting is convened within 45 days of referral, and early intervention services listed on the IFSP are provided in a timely manner; and

—Conducting timely transition planning for all children by preparing a transition plan, holding a transition meeting and notifying the local educational agency (LEA) of children approaching the age of transition.

2. DHEC Testified That It Cannot Immediately Come Into Full Compliance With Part C Requirements Due to Three Major Long-Term Barriers

DHEC acknowledged that it is not complying with Part C and cannot immediately come into compliance with Part C requirements. In his power-point presentation and written testimony, *DHEC Presentation at Compliance Agreement Public Hearing,* the DHEC BabyNet Director, David Steele, identified the following three principal barriers to its ability to come into immediate compliance with Part C: the lack of a monitoring system and interagency monitoring and cooperation, the lack of a reliable data system, and the lack of available qualified personnel. DHEC acknowledged that it does not have a systemic monitoring system to monitor all agencies, providers and programs that provide early intervention services in South Carolina and continues to have infants and toddlers on waiting lists for evaluations and assessments as well as for early intervention services in more than one geographic area. The need for interagency cooperation on all aspects of service delivery under the Part C system is a key challenge.

One major barrier to immediate compliance is DHEC's need to establish a monitoring system, since South Carolina's statewide system of early intervention services involves efforts from six different State agencies as well as numerous private contractors. Six different agencies (including DHEC) conduct child find, evaluations and assessments, transition planning and provide service coordination and early intervention services. During the public hearings, DHEC officials testified that DHEC does not have a monitoring system to monitor its interagency partners or its private providers that conduct evaluations and transition planning and provide service coordination, and early intervention services. The only efforts DHEC had made to monitor its BabyNet program failed to identify and require correction of many important violations of Part C. DHEC also did not have any protocols for evaluating other agencies nor did it have uniform standards for training and services that were in compliance with Part C. DHEC is just now beginning to establish a mechanism for working with each of these agencies on an ongoing basis to coordinate all Part C activities including monitoring these agencies' compliance with Part C requirements and providing joint and collaborative training and technical assistance.

DHEC cannot immediately address this barrier. The first critical step will be the development of memoranda of agreements that address each agency's responsibility in addressing Part C's requirements. Another critical step will be interagency cooperation to allow DHEC to monitor how each agency conducts child find, evaluations and assessments, and transition planning, and provides service coordination and early intervention services based on Part C standards. Jointly training agency staff, implementing a monitoring system and identifying noncompliance issues and developing appropriate corrective action steps are all necessary to address compliance issues.

A second barrier is the need for DHEC to integrate and verify its new online web-based data system, which is a critical component of its monitoring system. DHEC officials testified that ensuring complete and accurate real-time data reporting that is necessary for program decision-making and accountability will take time. Securing baseline data under the new system is critical to DHEC's plan to identifying and addressing the root causes of the areas of noncompliance identified by OSEP. At the time of OSEP's monitoring visit, no information was collected by DHEC regarding private contractors who conducted evaluations and assessments and who provided early intervention services. DHEC intends for the new data

system to capture this information as well as information about the number of infants and toddlers on waiting lists for evaluations, early intervention services, and transition planning. Another goal of DHEC for its data system is to better track (with parent consent when needed) information about children who transition from Part C to Part B of the IDEA. Verifying the new data system will take DHEC more than one year and effectively incorporating the data system into its new monitoring system to verify both noncompliance areas and corrective action results will take DHEC longer.

A third major barrier that affects DHEC's ability to comply with Part C is a lack of enough qualified personnel to conduct evaluations and assessments and provide early intervention services. DHEC testimony cited personnel recruitment and development issues as among the top three challenges for its program. DHEC cannot, acting on its own, rapidly resolve this personnel shortage. DHEC is unable to find providers who are willing to travel to some of South Carolina's more rural areas to provide services in the infant or toddler's home. South Carolina also is not competitive with its neighboring states in the remuneration it offers providers. In some professions, South Carolina is challenged to find qualified personnel and DHEC may need to develop long-term strategies including working with its higher education institutions to ensure that personnel are trained. Removing all these barriers to obtaining needed personnel will require a long-term and systematic effort on DHEC's part that will involve working with other organizations in South Carolina to review existing policies and practices so that effective strategies for training, recruiting and retaining qualified personnel for early intervention services can be implemented.

3. Testimony From Other SC Agency Representatives, Providers and Parents All Confirms DHEC Cannot Immediately Come Into Compliance

Testimony from other individuals also confirmed that DHEC cannot come into full compliance with Part C immediately. Representatives from other South Carolina agencies that provide early intervention services, parents and individual providers of Part C services all testified that DHEC will need additional time to achieve full compliance.

At least three witnesses at the hearing (from other South Carolina agencies) confirmed that DHEC needs more time to ensure interagency coordination among the six agencies that are part of the early intervention system in South Carolina. Susan Durrant, Director in the SC Department of Education (Division of Exceptional Children) cited the need for interagency coordination in the following areas in particular between the SC Department of Education and DHEC: (1) Making policies and procedures "congruent"; (2) joint collaboration on child find; and (3) developing "seamless services" particularly as children transition from Part C to Part B. A representative of the Department of Disabilities Special Needs, who is a parent, testified about the need for her agency's joint collaboration on training with DHEC and the monitoring standards.

A representative of the School for the Deaf and Blind identified one challenge unique to South Carolina, namely the ability to find available private contractors to address the needs of eligible infants and toddlers with disabilities who live in rural areas, since many providers are unwilling to travel to rural areas and remuneration for providers in these areas is not competitive. She stressed that coordination between BabyNet and the School for the Deaf and Blind must be on all issues (from general supervision to child find to evaluations to delivery of services and transition) since the School for the Deaf and Blind conducts all aspects of Part C (from evaluating infants and toddlers with disabilities and providing services to transition) and receives funding and training from DHEC and shares other resources with it. She noted that a key coordination challenge will be the use of both agencies' quality assurance staff to ensure that monitoring for compliance with Federal Part C requirements is conducted appropriately, using the correct standards, trained staff, with follow-up if noncompliance is identified.

Other witnesses, including parents and providers, confirmed that DHEC continues to face long-term challenges in complying with Part C, including availability of qualified personnel to provide evaluations and assessments and early intervention services. Some parents who submitted testimony indicated they were frustrated with waiting lists for services, including speech and other therapy services, and noted that some services were not even available or offered. One parent of a recently diagnosed child with autism indicated there were waiting lists and that there was a problem with service providers being available for services such that he was forced to pay for private services himself. Another parent noted that child find in the Catawba Nation was a challenge for DHEC and ongoing transition training needs were necessary. Another parent noted that "many systemic changes need to take place" and that transition for children from Part C is an issue. Parents in oral and written testimony stated that the availability of services and waiting lists continue to be problems (Hearing #7, #13). Michael Jameson, Vice-Chair of the State Interagency Coordinating Council (SICC) and a parent, testified that DHEC needed more time due to its need to develop a monitoring system that monitored all six agencies that provide Part C services and the numerous private contractors.

Providers, including speech language pathologists, occupational therapists and physical therapists, also submitted testimony noting that timely provision of services was a problem due to "limited availability of services, especially in the home environment." They noted that although BabyNet is in transition, the verification and integration of a new web-based data system and recruitment of short-term and long-term qualified personnel to conduct evaluations and provide early intervention services were not quick fixes and would require more than one year, perhaps as many as three years. Providers stated that some of the changes made (development of a new policy and procedure manual, new IFSP form, and other training materials) as well as developing long-term personnel recruitment and retention policies and incentives would take at least two to three years to develop and fully implement. DHEC also acknowledged that monitoring to ensure that the new policies, forms and manuals were being effectively used would require the full three years.

The evidence gathered by the Department at the public hearings and through its monitoring of DHEC's early intervention program establishes an extensive failure to meet the requirements of Part C. These problems are not isolated examples of non-compliance that can be quickly or easily corrected, but the outgrowth of systemic failures, for which systemic change is needed. The Department, therefore, concludes that DHEC cannot come into immediate compliance with the requirements of Part C.

C. DHEC Can Come Into Full Compliance With Part C Within Three Years

The Department has concluded that DHEC can meet the terms and conditions of the attached Compliance Agreement and come into full

compliance with Part C within three years. The Compliance Agreement sets forth clear goals, outcomes and objectives, specific activities to reach those results, and timelines including target completion dates. Testimony at the hearing supports the conclusion that DHEC is committed to making the necessary changes to come into compliance with Part C. For example, the SICC Vice-Chair noted that DHEC had demonstrated its good faith and willingness to change by taking the few steps that were in its direct control immediately after OSEP's initial on-site monitoring visit. These steps included the development of brochures in English and Spanish and revision of the IFSP form. Providers also acknowledged that DHEC has demonstrated a commitment to change ("they have made many changes" (Cree M. Lause, PT); "it (DHEC) has been working steadily to correct the problems cited from OSEP's data collection visit (in February 2002)." (Mary Gene H. White, SLP)). To ensure that DHEC remedies its noncompliance as soon as possible, the Compliance Agreement sets forth realistic and specific timelines for accomplishing each objective. DHEC officials testified that it has already implemented the following actions to address OSEP's findings of noncompliance:

—Development of an intra- and interagency policy/procedure manual;
—Detailed contracts for private contractor providers;
—Restructuring training for all six agency personnel on Part C requirements and compliance issues;
—Development and dissemination of new public awareness materials in English and Spanish;
—Development of model IFSP form to include all federally required elements including present levels of functioning;
—Completion of IFSP form use training by all service coordinators;
—Automatic referrals by SSI to DHEC; and
—Development of interagency transition policies and conducting follow-up transition training.

The actions that remain are long-term strategies to address the three principal barriers to DHEC's successful implementation of Part C. Thus, the Compliance Agreement contains specific plans to develop effective interagency monitoring and cooperation mechanisms. It also requires completion of a verifiable online web-based data system that will be used and integrated by DHEC as it monitors specific BabyNet Coordination Team compliance to ensure that timely evaluations and assessments, IFSP completion and provision of early intervention services and transition planning are occurring. Finally, it requires long-term personnel recruitment and development policies to be developed.

The Compliance Agreement also establishes realistic goals and systemic strategies—which will be monitored by the Department—for bringing DHEC into compliance with Part C. The Compliance Agreement addresses the five major areas of DHEC's non-compliance with Part C, namely: (1) General Supervision, (2) Child Find/ Public Awareness, (3) Timely and Comprehensive Child Evaluation and Assessments, (4) Timely IFSP Development and Provision of Early Intervention Services, and (5) Transition. Under each of these Compliance Agreement areas, DHEC sets out objectives as well as specific steps that it will take to achieve its objectives and address the non-compliance areas that are at issue in OSEP's monitoring report. The Compliance Agreement also identifies the key parties (including DHEC, other State agencies and stakeholder groups including the SICC), who will take responsibility for carrying out each of the strategies. Thus, specific parties can be held accountable if an activity delineated in the Compliance Agreement is not properly implemented.

In addition to specifying overall compliance goals, a plan for meeting them, and the party responsible for implementing the specific actions steps, the Compliance Agreement also sets out interim objectives that DHEC must meet during the next three years in attaining compliance with Part C. DHEC is committed not only to being in full compliance with Part C within three years, but also has a plan to address each objective in as timely a manner as possible. The Compliance Agreement sets forth the data collection and reporting procedures that DHEC will follow. These provisions will enable the Department to determine whether or not DHEC is meeting each of its commitments under the Compliance Agreement. The Compliance Agreement, because of the obligations it imposes on DHEC, will provide the Department with the information and authority it needs to protect the Part C rights of South Carolina infants and toddlers with disabilities.

DHEC has developed a comprehensive plan to address the underlying causes of its failure to comply with Part C. For these reasons, the Department concludes that DHEC can meet all the terms and conditions of the Compliance Agreement and come into full compliance with Part C no later than three years from the date of the Agreement.

IV. Conclusion

For the foregoing reasons, the Department finds that: (1) Full compliance by DHEC with the requirements of Part C is not feasible until a future date, and (2) DHEC can meet the terms and conditions of the attached Compliance Agreement and come into full compliance with the requirements of Part C within three years of the date of this decision. Therefore, the Department determines that it is appropriate for this agency to enter into a Compliance Agreement with DHEC. Under the terms of 20 U.S.C. 1234f, this Compliance Agreement becomes effective on the date of this decision.

Dated: September 9, 2003.

Roderick Paige,

Secretary, U.S. Department of Education.

Attachment: South Carolina Compliance Agreement

Appendix B—Text of the Binding Provisions of the Compliance Agreement; Compliance Agreement Under Part C of the Individuals with Disabilities Education Act, the Infants and Toddlers with Disabilities Program, Between the U.S. Department of Education and the South Carolina Department of Health and Environmental Control

I. Introduction

On January 6, 2003, pursuant to an on-site monitoring visit to South Carolina (SC) in February 2002 by the Office of Special Education Programs (OSEP) of the U.S. Department of Education (Department), OSEP issued a final monitoring report that documented non-compliance by the South Carolina Department of Health and Environmental Control (DHEC) with Part C of the Individuals with Disabilities Education Act (Part C of the IDEA). On May 1, 2003, pursuant to a DHEC request to enter into a compliance agreement, OSEP conducted a public hearing regarding DHEC's ability to comply with Part C. The hearing and testimony from representatives of other South Carolina agencies, Part C providers, parents and other individuals confirmed that, under 20 U.S.C. 1234c, full compliance with Part C by DHEC is not feasible until a future date, but that DHEC is able to come into compliance with Part C in no more than three years. Testimony at the hearing and written testimony submitted further supported the development of a compliance

agreement in order to bring DHEC into compliance with Part C as soon as feasible and to allow continuation of Part C funds to South Carolina during this process. As indicated in the Secretary's Written Findings and Decision, the Department agrees that a compliance agreement is appropriate to address DHEC's noncompliance with Part C.

II. Areas of Identified Non-Compliance

Pursuant to this Compliance Agreement under 20 U.S.C. 1234f, DHEC must be in full compliance with the requirements of Part C no later than three years from the effective date of this Agreement, which is the date the Secretary's Written Findings of Fact and Decision are issued and when the Compliance Agreement is signed by both DHEC and the Department. Specifically, DHEC [4] must ensure and document that no later than three years from the effective date of this Agreement, the following compliance goals are achieved within each of the following five major areas:

1. *General Supervision:* DHEC must meet its general supervision responsibilities and monitor for compliance with all requirements of Part C, including employing appropriate methods of administering the Part C program, including monitoring State agencies, institutions, organizations and private providers that are part of the Part C system, and enforcing obligations against and providing training and technical assistance to all such entities and individuals, when identified as part of a required improvement strategy.

2. *Child Find/Public Awareness:* DHEC must ensure that a coordinated child find system results in the identification of all eligible infants and toddlers with disabilities and that public awareness materials about the infants and toddlers with disabilities program are made available to the public, including rural, minority and underrepresented populations.

3. *Timely/Comprehensive Evaluations:* DHEC must ensure that all infants and toddlers referred to Part C receive timely and comprehensive evaluations in all five developmental areas, such that evaluations and assessments are completed within 45 days of referral to enable the initial Individualized Family Service Plan (IFSP) team meeting to be convened in that time period. DHEC must ensure there are adequate personnel in all geographic areas to enable evaluations and assessments to be completed within the 45-day timeline and to eliminate waiting lists for evaluations and assessments.

4. *Identification and Timely Provision of All Early Intervention Services on IFSPs:* DHEC must ensure that all early intervention services needed by an eligible infant or toddler with a disability and the child's family are identified on the IFSP, including any family training, counseling and home visits. DHEC must ensure that all early intervention services identified by the IFSP team are provided in a timely manner to infants and toddlers with disabilities and their families. DHEC must ensure that the present level of functioning for each developmental area is identified on each IFSP.

5. *Transition Planning:* DHEC must conduct timely and content-appropriate transition plans and transition meetings for children who are transitioning from Part C to Part B of IDEA. For families transitioning to other programs, DHEC will develop content-appropriate transition plans and make reasonable efforts to convene a transition conference.

During the period that this Compliance Agreement is in effect, DHEC is eligible to receive Part C funds if it complies with the terms and conditions of this Agreement and all other provisions of Part C not addressed by this Agreement. Specifically, the Compliance Agreement sets forth goals and timetables that are necessary for DHEC to come into compliance with its Part C obligations. In addition, DHEC is required to submit documentation concerning its compliance with these goals and timetables. Included in the Compliance Agreement are five individual Work Plans which address specific topic areas of DHEC's non-compliance with Part C, and include outcomes, goals, objectives, activities to achieve results, verification, and target completion dates for DHEC's progress toward full compliance over the three-year Agreement. Since some of the compliance goal areas are interrelated, some activities and outcomes are repeated in more than one area. With prior written approval from OSEP, amendments to the Activities to Reach Results column listed in the tables may be made when necessary to support achievement of compliance outcomes within the required timelines. The Activities to Reach Results will be evaluated every six months to determine their effectiveness and any need for change. Any requests for changes in the activities or any other amendments to the Agreement shall be submitted in writing to OSEP.

III. Current Status, Goals and Measurable Outcomes and Verification for Five Areas of Non-Compliance

1. Area 1: General Supervision

Current Status: The Department's January 6, 2003 monitoring report found that: DHEC did not have a method to identify local noncompliance with Part C requirements, that Part C private providers were not following Part C regulations (including provisions that require early intervention services to be provided in the natural environment), DHEC did not monitor other agencies, institutions, organizations and providers used by the State to carry out Part C, DHEC did not enforce all obligations under Part C and DHEC had not adopted and used proper methods of administering each program, including providing technical assistance and training. DHEC's self-assessment data and BabyTrac Data support these findings.

Outcome: DHEC will ensure that all eligible infants and toddlers and their families have available appropriate early intervention services in accordance with Part C requirements through the development and implementation of an interagency comprehensive monitoring and general supervision system that includes a continuous improvement and focused monitoring process.

Measurable Goals and Verification: DHEC has identified the following goals and will either provide or make available verification to the Department for each goal.

Goal 1: Monitoring policies, procedures, and instruments will identify compliance deficiencies and ensure these are corrected in a timely manner.

Goal 2: Ongoing technical assistance and training to public and private providers, administrators, paraprofessionals, and special instructors will be provided to ensure compliant provision of services to infants and toddlers with disabilities and their families.

Goal 3: Appropriate sanctions will be used when necessary to enforce correction of deficiencies.

Verification: In its quarterly report to OSEP, DHEC shall provide summaries of the status of each of the above goals (consistent with the General Supervision Compliance Work Plan) and shall provide a narrative of how DHEC has analyzed and responded to the data provided by each BNCT. DHEC shall also provide in its quarterly reports, summaries of progress in

[4] DHEC's Part C program is called the BabyNet program. The Compliance Agreement uses the terms BabyNet and DHEC interchangeably. The monitoring system designed by DHEC includes the use of BabyNet Coordination Teams or BNCTs.

meeting the target completion dates for each of the activities identified under general supervision, including (1) the identification and correction of any barriers, legislative or other, to ensure compliance with Part C, (2) an interagency memorandum of agreement that focuses on monitoring of all State agencies that provide Part C services, and (3) procedures for enforcing or correcting identified non-compliance, including use of appropriate sanctions. In addition, DHEC will submit the verification data and/or documentation listed in the attached General Supervision Compliance Work Plan on the dates the quarterly reports are due to OSEP.

2. Area 2: Child Find/Public Awareness

Current Status: OSEP's monitoring report reflected that: public awareness activities were not effective in informing parents of infants and toddlers with disabilities of underrepresented populations; there was a lack of coordination for child find and public awareness among relevant agencies (including child care, migrant Head Start, SSI); physician referrals were problematic including "wait and see" attitude and misperception that BabyNet addresses child health instead of development; there was a lack of public awareness materials in daycare centers, pediatric offices or developmental centers; and public awareness materials were not distributed or available in Spanish. DHEC's self-assessment data and BabyTrac Data support these findings.

Outcome: DHEC will ensure the development and implementation of a comprehensive, coordinated public awareness/child find system that results in the identification, evaluation, and assessment of all eligible infants and toddlers.

Measurable Goals and Verification: DHEC has identified the following goals and will either provide or make available verification to the Department for each goal.

Goal 1: DHEC shall ensure that the child find system is coordinated with all major efforts to locate and identify eligible children conducted by other State agencies.

Goal 2: DHEC will ensure that the child find system is coordinated with all other major efforts to locate and identify children conducted by other State agencies, programs, and organizations, and DHEC shall conduct outreach to these entities including private entities such as pediatric practices and day care centers.

Goal 3: Families will have access to public awareness materials (to ensure identification of all eligible infants and toddlers and to enable access to culturally competent services) that inform and promote referral of eligible infants and toddlers to the Part C system.

Verification: Within the first week of each month and each month thereafter, each BNCT will prepare a report regarding the Child Find verification data listed in the Child Find Compliance Work Plan. In its quarterly report to OSEP, DHEC shall provide monthly data summaries, by each BNCT, and shall provide a narrative of how DHEC has analyzed and responded to the data provided by each BNCT.

3. Area 3: Timely/Comprehensive Evaluations

Current Status: OSEP's monitoring report reflected that: Evaluations and assessments were not completed in all five developmental areas; content on initial IFSPs was limited to future referrals for further evaluation and assessment; infants and toddlers were not evaluated in the areas of vision and hearing; evaluations and assessments were often not completed within the 45-day timeline; there are waiting lists for evaluations and assessments; and shortages of providers in some areas impacted completion of evaluations and assessments in a timely manner.

Outcome: DHEC will ensure that infants and toddlers receive timely comprehensive evaluations in all five developmental areas to enable the initial IFSP team meeting to be convened within 45 calendar days from referral.

Measurable Goals and Verification: DHEC has identified the following goals and will either provide or make available verification to the Department for each goal.

Goal 1: DHEC will ensure that evaluations and assessments are completed in all five developmental areas—cognitive development, physical development, including vision and hearing, communication development, social and emotional development and adaptive development.

Goal 2: DHEC will ensure that infants and toddlers receive timely evaluations and assessments in order to enable the initial IFSP team meeting to be convened within 45 calendar days from referral and eliminate waiting lists for evaluations and assessments.

Verification: Each BNCT will demonstrate continuous improvement in ensuring all infants and toddlers receive timely evaluations and assessments, including vision and hearing within the 45-day timeline. Quarterly benchmarks will be established for each BNCT and incorporated in the BNCT Compliance Plan. Benchmarks will take the BNCT from their specific baseline in this area and ensure continuous substantial progress until all infants and toddlers with disabilities receive timely evaluations and assessments in all developmental areas, including vision and hearing, within the 45-day timeline. DHEC will monitor each BNCT to ensure that benchmarks are met and will intervene directly with individual BNCTs, as necessary. In its quarterly report to OSEP, DHEC shall provide monthly summaries, by each BNCT and shall provide a narrative of how DHEC has analyzed and responded to the data provided by each BNCT.

4. Area 4: Proper Development of, and Timely Provision of Early Intervention Services on, Individualized Family Service Plan (IFSP)

Current Status: OSEP's monitoring report reflected that: Present levels of functioning were written in some developmental areas, but were frequently omitted for the physical and communication developmental areas; all needed services, including family support services, were not listed on the IFSP; providers reported that it was difficult to obtain counseling services and parenting classes; the provision of early intervention services was delayed; for some infants and toddlers with disabilities and families, EI services were not provided; and waiting lists existed for early intervention services.

Outcome: DHEC will ensure the development and implementation of complete IFSPs for all eligible infants and toddlers with disabilities and their families and ensure that all infants and toddlers with disabilities and their families are provided early intervention services in a timely manner.

Measurable Goals and Verification: DHEC has identified the following goals and will either provide or make available verification to the Department for each goal.

Goal 1: All IFSPs will contain the required components in accordance with Part C.

Goal 2: All infants and toddlers with disabilities and their families will receive all early intervention services identified on their IFSP in a timely manner and waiting lists for all early intervention services will be eliminated.

Verification: Each BNCT will demonstrate continuous improvement in eliminating waiting lists for receipt of early intervention services on the IFSP each quarter. Quarterly benchmarks will be established for each BNCT and incorporated in the BNCT's Compliance Plan. Benchmarks will take the BNCT

from their specific baseline in this area and ensure continuous substantial progress until there are no infants and toddlers on waiting lists for evaluation and assessment. DHEC will monitor each BNCT to ensure that benchmarks are met and will intervene directly with individual BNCTs, as necessary. In its quarterly report to OSEP, DHEC shall provide monthly summaries by each BNCT and shall provide a narrative of how DHEC has analyzed and responded to the data provided by each BNCT.

5. Area 5: Timely Transition Planning and Conferences

Current Status: OSEP's monitoring report reflected that: School districts were not being notified of BabyNet eligible children approaching age three; transition meetings were not being held in accordance with Part C requirements; and transition plans were not being developed and implemented in accordance with Part C requirements.

Outcome: DHEC will ensure that timely transition notices are provided and transition meetings are held and that transition plans are developed to assist all eligible children and their families as they exit Part C.

Measurable Goals and Verification: DHEC has identified the following goals and will either provide or make available verification to the Department for each goal.

Goal 1: DHEC will ensure that the local education agency is notified of children who are approaching the age for transition at least 90 days prior to the child turning three in accordance with Part C.

Goal 2: DHEC will ensure that a transition meeting is held in accordance with the requirements of Part C of IDEA.

Goal 3: DHEC will ensure that transition plans are developed and implemented in accordance with the requirements under Part C.

Verification: Each BNCT will demonstrate continuous improvement in reducing the number of eligible children who have not received required Part C Transition planning in a timely manner when exiting BabyNet. Quarterly benchmarks will be established for each BNCT and incorporated in the BNCT's Compliance Plan. Benchmarks will take the BNCT from their specific baseline in this area and ensure continuous substantial progress until all eligible children receive required Part C Transition planning in a timely manner when exiting BabyNet. DHEC will monitor each BNCT to ensure that benchmarks are met and will intervene directly with individual BNCTs, as necessary. In its quarterly report to OSEP, DHEC shall provide monthly summaries, by each BNCT and shall provide a narrative of how DHEC has analyzed and responded to the data provided by each BNCT.

Other Conditions: DHEC agrees that its continued eligibility to receive Part C funds is predicated upon compliance with statutory and regulatory requirements of that program, which includes requirements not addressed specifically by this Agreement. Any failure by DHEC to comply with the goals, objectives, timetables, verification or other provisions of the Compliance Agreement, including the reporting requirements, will authorize the Department to consider the agreement no longer in effect. If DHEC fails to comply with the terms of the Agreement, the Department may take any actions authorized under the General Education Provisions Act (GEPA at 20 U.S.C. 1200 *et seq.*) and the IDEA at 20 U.S.C. 1401 *et seq.* and 1443–1445. Such actions may include, under 20 U.S.C. 1234c, the withholding of Part C funds from the State (consistent with the procedures set forth in the IDEA or at 20 U.S.C. 1234d).

Signed for the South Carolina Department of Health and Environmental Control:

Dated: August 20, 2003.

C. Earl Hunter,

Commissioner.

Signed for the U.S. Department of Education:

Dated: September 9, 2003.

Roderick Paige,

Secretary.

Date this Compliance Agreement Becomes Effective: September 9, 2003. (Date on which Written Findings of Fact are Issued).

BILLING CODE 4000–01–P

South Carolina Department of Health and Environmental Control
Compliance Agreement
AREA 1: GENERAL SUPERVISION COMPLIANCE WORK PLAN

AREA OF NON-COMPLIANCE: The State Lead Agency has failed to employ proper methods of administering the Part C Program, including monitoring state level agencies, institutions and organizations used by the state to provide Part C services, enforcing obligations and providing training and technical assistance.

BASELINE DATA:

1. **CIMP Self-Assessment Report – December 2000:**
   a. DHEC did not have a monitoring system to ensure general administration and supervision of programs and activities for IDEA requirements under Part C; and
   b. DHEC did not have monitoring policies, procedures and staff necessary to ensure compliance with federal and state laws, regulations, and policies and procedures.
2. **OSEP Monitoring Report – Onsite Visit February 2002:**
   a. DHEC had not identified any local noncompliance issues as a result of quarterly meetings; the quarterly meetings and reports did not afford DHEC an effective method for identifying and correcting noncompliance;
   b. Current activities were not sufficient to monitor for most of the requirements of Part C;
   c. Providers were not following Part C regulations including natural environments, etc;
   d. Services were not always provided in environments listed on IFSP;
   e. DHEC did not exercise its general supervisory authority to ensure compliance with Part C; including a lack of an effective method of supervision for private providers enabling the state to correct deficiencies; and
   f. DHEC had not implemented a monitoring system that was effective in identifying noncompliance of agencies, institutions, and organizations used by the state to carry out Part C; had not enforced all the obligations imposed under Part C of IDEA; and had not adopted and used proper methods of administering each program, including providing technical assistance and training.

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

OUTCOME: The Department of Health and Environmental Control will ensure that all eligible infants and toddlers and their families have available appropriate early intervention services in accordance with Part C requirements through the development and implementation of an interagency comprehensive monitoring and general supervision system that includes a continuous improvement and focused monitoring process.

Goal 1: Monitoring policies, procedures, and instruments will identify compliance deficiencies and ensure these are corrected in a timely manner.

Goal 2: Ongoing technical assistance and training to public and private providers, administrators, paraprofessionals, and special instructors will be provided to ensure compliant provision of services to infants and toddlers with disabilities and their families.

Goal 3: Appropriate sanctions will be used when necessary to enforce correction of deficiencies.

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

With prior written approval from OSEP, adjustments to the Activities to Reach Results column listed in this table may be made when necessary to support achievement of compliance outcomes within the required timelines. The Activities to Reach Results will be evaluated every six months to determine their effectiveness and any need for change. Any requests for changes or amendments will be submitted to OSEP in writing.

Activities to Reach Results	Verification	Target Completion Date	Date Completed
Objective GS-1: Revise formal policy structure upon which the Part C system in South Carolina functions.			
GS-1A. Identify and correct any barriers, legislative or other, to ensure compliance with federal Part C statute and regulations. (Findings: 2e, 2f)			
GS-1A.1 Draft analysis of barriers, legislative or other, to ensure compliance with federal Part C statute and regulations.	Submit analysis to OSEP for comment/review along with proposals for removing the barriers to compliance with Part C.	June 30, 2004	
GS-1A.2 Prepare final language of any proposal, including as appropriate, legislative, regulatory or policy changes needed to comply with Part C.	Submit to OSEP finalized language of proposal.	January 31, 2005 and June 30, 2005 for any legislative changes needed.	
GS-1B. Interagency Memorandum of Agreement implemented that reflects Part C requirements, and focuses on monitoring and appropriate sanctions for noncompliance. (Findings: 2b, 2c, 2e, 2f)			

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Activities to Reach Results		Verification	Target Completion Date	Date Completed
GS-1B.1	Interagency workgroup composed of agency representatives to meet monthly to draft revised Memorandum of Agreement.	Submit to OSEP status of MOA in progress report.	September 30, 2003 and quarterly until MOA complete.	
GS-1B.2	Submit draft of revised MOA to OSEP for review/comments.	Draft of proposed MOA submitted to OSEP for review. Signed final Interagency Memorandum of Agreement is submitted to OSEP.	January 31, 2004 March 31, 2004	
Objective GS-2: Ensure DHEC's ability to enforce Part C compliance when required through the use of appropriate sanctions.				
GS-2A.	Incorporation of interagency enforcement/accountability process into the Interagency Memorandum of Agreement. A list of appropriate sanctions and the process under which they will be used will be developed. (Findings: 2e, 2f)	Documentation of interagency sanctions being incorporated into Interagency Memorandum of Agreement through the process listed in GS1B. MOA draft submitted to OSEP for review will contain list of sanctions and procedures. MOA implemented that includes sanctions for noncompliance.	January 31, 2004 March 31, 2004	
GS-2B.	Lead Agency develops a process for the use of appropriate sanctions that will ensure BN Contracted Provider compliance with Part C regulations. (Findings: 2c, 2e, 2f)	List of, and guidelines or process governing, draft appropriate sanctions submitted to OSEP with quarterly report. Revised contracts for private contractors and sanctions policy also submitted to OSEP. Sanctions implemented as part of BN contracts with private providers. Documentation to OSEP of approved sanction process being distributed to all BabyNet Contracted providers.	November 30, 2003 December 31, 2003	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Activities to Reach Results	Verification	Target Completion Date	Date Completed
GS-2C. Process for use of appropriate sanctions for BN Service Coordinators, Special Instructors, and their supervisors will be incorporated into the Infant-Toddler Credentialing process to ensure compliance with Part C regulations. (Findings: 2c, 2e, 2f)	Draft sanctions in BN provider credential process (including identifying criteria for when, how and what BN providers are notified about that they may not receive a renewal of their BN provider credential) submitted to State Interagency Coordinating Council for review and comment. Adoption of Infant-Toddler Credential sanctions process by SC-ICC and submit to OSEP final approved process.	November 30, 2003 December 31, 2003	
Objective GS-3: Ensure availability of accurate and reliable data used for decision-making and accountability.			
GS-3A. Identify data elements necessary to ensure Part C accountability, the sources of the data, and how the data can be best be obtained and used to inform data gathering practices. (Finding: 2f)	Documentation of planned revisions to the BabyTrac-II system is available for review.	September 30, 2003	
GS-3B. Design and implement revisions to BabyTrac-II, including the addition of elements and reports necessary for compliance and the method(s) DHEC will use to conduct data verification, which shall be approved by OSEP. (Finding: 2f)	Documentation of revisions to BabyTrac-II available for review. Provide OSEP description of DHEC's data verification process as implemented (including any manuals)	November 30, 2003	
GS-3C. Ensure availability of accurate and timely data for the annual December 1 federal data report. (Finding: 2f)	December 1 data available for submission to OSEP on due dates.	January 1, 2004	
Objective GS-4: Design and implement a comprehensive interagency monitoring system to ensure system wide accountability for Part C requirements.			
GS-4A. Review and determine applicable characteristics and elements of effective monitoring as provided by OSEP. (Findings: 2a, 2b, 2f)	Submit summary in progress report to OSEP.	November 30, 2003	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Activities to Reach Results		Verification	Target Completion Date	Date Completed
GS-4B. With technical assistance from NCSEAM and MSRRC, convene stakeholders including state agency representatives to develop detailed monitoring infrastructure and TA plan that includes the following elements- focused monitoring, onsite visits, desk audit, data analysis and verification, tools, timelines, and a basic structure that yields changed behaviors and quality practices that are compliant. (Finding: 2f)		Meeting agendas, minutes, and attendance is available for review.	November 30, 2003	
	GS-4B.1 Produce written policies and procedures for implementation of monitoring system.	Written monitoring manual, policies, procedures, instruments, including who will conduct the monitoring, is submitted to OSEP.	March 31, 2004	
	GS-4B.2 Establish and train interagency onsite monitoring teams.	Documentation of team membership and completed training is available for review.	May 31, 2004	
	GS-4B.3 Establish schedule and conduct first focused onsite monitoring visits.	Selection of monitoring sites and schedule of visits is submitted to OSEP.	July 31, 2004	
	GS-4B.4 Complete onsite monitoring reports and incorporate findings into BabyNet Coordination Team Compliance Plans. (Findings: 2a, 2b, 2f)	Monitoring reports are available for review on an ongoing basis. BabyNet Coordination Team Compliance Plans submitted by DHEC to OSEP in quarterly reports. Compliance plans shall reflect and address findings from DHEC's monitoring reports.	First report by September 30, 2004 and quarterly thereafter.	

Objective GS-5: Establish statewide system to ensure accountability and compliance with Part C requirements including but not limited to child find, transition, child evaluation, IFSP development, provision of timely services, and ongoing system monitoring.

Note: BabyNet Coordination Teams serve as the basis of accountability to address areas of noncompliance (as included in the Compliance Agreement) through the ongoing analysis of data, improvement planning, monitoring, and verification of change. These teams are comprised of local BabyNet participating agency representatives, providers, parents, school districts, etc.

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Activities to Reach Results		Verification	Target Completion Date	Date Completed
GS-5A.	BabyNet Coordination Teams will be established statewide and begin monthly meetings to address the initiation of immediate improvement strategies. (Findings: 2e, 2f)	Written minutes from monthly BNCT meetings available for review.	First minutes available September 30, 2003 and monthly thereafter.	
GS-5A.1	Prepare baseline data tables for each of the BN Coordination Teams in areas of noncompliance. BNCTs will be ranked according to areas of noncompliance. (Findings: 2a, 2b, 2e, 2f)	Provide OSEP baseline data for each of BNCTs related to child find, transition, child evaluation, IFSP development and the provision of timely services.	October 31, 2003	
	Continue to prepare data tables for the state and for each of the BN Coordination Teams on issues on noncompliance and targeted areas needing improvement.	Data analysis submitted and documented in quarterly reports to OSEP.	November 30, 2003 and quarterly thereafter.	
GS-5A.2	Design the Compliance Plan format BN Coordination Teams will use to develop and implement their Compliance Plans related to areas of noncompliance. Each Compliance Plan will include a Technical Assistance component that will identify specific supports needed to accomplish plan objectives in each area of noncompliance.	BNCT Compliance Plan format submitted to OSEP and disseminated to all BNCTs.	November 30, 2003	
GS-5A.3	Select 6 initial BN Coordination Teams for Target Group 1 that are most in need of improvement	Notification letters to the BN Coordination Teams selected. Copies of letters submitted to OSEP with quarterly report.	November 30, 2003	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Activities to Reach Results		Verification	Target Completion Date	Date Completed
	based upon ranking in 4A.1.			
GS-5A.4	Target Group 1, comprised of 6 BN Coordination Teams, develop Compliance Plans to address identified areas of noncompliance.	BN Coordination Team Compliance Plans identifying areas of noncompliance and corrective actions with timelines are submitted to OSEP.	January 31, 2004	
		Status of Compliance Plan progress will be reported to OSEP quarterly through the BNCT meeting minutes and ongoing data analysis reports.	February 29, 2004 and quarterly thereafter.	
		Review data in Target Group 1 (6 teams) to determine if noncompliance areas are corrected and if full compliance has been achieved in these areas. Provide OSEP analysis of data for each BNCT.	June 30, 2005	
		Full compliance throughout state verified through data in these 6 BNCT areas.	May 31, 2006	
GS-5A.5	Select 6 additional BN Coordination Teams for targeting that are most in need of improvement based upon ranking in 4A.1.	Notification letters to the BN Coordination Teams selected. Copies of letters submitted to OSEP with quarterly report.	January 31, 2004	
GS-5A.6	Target Group 2, comprised of 6 BN Coordination Teams, develop Compliance Plans to address identified areas of noncompliance.	Targeted BN Coordination Teams Compliance Plans are submitted to OSEP.	June 30, 2004	
		Summary analysis of Compliance Plan progress is reported to OSEP quarterly and ongoing for each BNCT's cycle through the monitoring process.	July 31, 2004 and quarterly thereafter for remainder of Compliance Agreement.	
		Review data in Target Group 2 (6 teams) to determine if noncompliance areas are corrected	July 31, 2005	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Activities to Reach Results	Verification	Target Completion Date	Date Completed
	and if full compliance has been achieved in these areas. Provide OSEP analysis of data for each BNCT. Full compliance throughout state verified through data in these 6 BNCT areas.	 June 30, 2006	
GS-5A.7 Continue to provide ongoing technical assistance and supervision to ensure BabyNet Coordination Team Compliance Plans are meeting their established benchmarks for compliance. If not meeting benchmarks for improvement, a formal review will be conducted by BabyNet Central Office to determine reasons for lack of progress and immediate remedies will be undertaken. (Finding: 2f)	As documented in quarterly reports to OSEP.	September 30, 2003 and quarterly thereafter.	
GS-5B. Select BabyNet Compliance Agreement Managers through the local DHEC Health Districts that will oversee BNCT Compliance Agreements. Staff in these positions will be responsible for monitoring, facilitating local BN Coordination Teams, evaluating IFSP meetings, supervision for programmatic compliance, feedback regarding district functioning, and working with local providers on program improvements. (Finding: 2f)	BN Compliance Agreement Managers roles and responsibilities submitted to OSEP.	September 30, 2003	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Activities to Reach Results	Verification	Target Completion Date	Date Completed
Objective GS6: Ongoing technical assistance and training to public and private providers, administrators, paraprofessionals, and special instructors will be provided to assure compliant provision of services to infants and toddlers with disabilities and their families.			
GS-6A. Continue development of training materials and technical assistance mechanisms (on in-service coordination; child find and referral; family-centered services; procedural safeguards; screening, evaluation and assessment; family-directed assessment; IFSP development; delivery of services in natural environments; special instruction strategies; parent training strategies; transition, and monitoring) to provide Training/Technical Assistance target groups with sufficient knowledge and guidance to engage in compliance and quality service delivery. (Finding: 2f)	Training curricula are available for review. Submit to OSEP in quarterly report narrative describing what and by when training and technical activities have occurred.	September 30, 2003 and quarterly thereafter.	
GS-6B. Provide curricula in a variety of media such as on-site training outlines, online courses, written and CD-ROM self-paced instructional modules. (Finding: 2f)	Submit to OSEP in quarterly report narrative describing what and by when training and technical activities have occurred.	August 31, 2004	
GS-6C. Develop and publish schedule of training institutes; publish availability of materials in other media. (Finding: 2f)	Schedules and training materials available for review. Submit to OSEP in quarterly report narrative describing what and by when training and technical activities have occurred.	September 30, 2003 and quarterly thereafter.	
GS-6D. Conduct training institutes on a regular and ongoing basis for current and new personnel across collaborating agencies, institutions, organizations, and providers. (Finding: 2f)	Schedules and documentation of completed trainings available for review. Submit to OSEP in quarterly report narrative describing what and by when training and technical activities have occurred.	September 30, 2003 and quarterly thereafter.	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Activities to Reach Results	Verification	Target Completion Date	Date Completed
GS-6E. Develop and implement evaluation of efficacy and quality of technical assistance and training. (Finding: 2f)	Evaluation methods and instruments available for review. Submit to OSEP narrative describing the evaluation methods that have been developed and the dates.	October 31, 2003 and annually thereafter.	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.
South Carolina Compliance Agreement – General Supervision

South Carolina Department of Health and Environmental Control
Compliance Agreement
AREA 2: CHILD FIND/PUBLIC AWARENESS COMPLIANCE WORK PLAN

AREA OF NON-COMPLIANCE: DHEC does not ensure that there is a coordinated child find system and that public awareness materials are made available to the public.

BASELINE DATA:

1. **CIMP Self-Assessment Report – December 2000:**
   - a. Rates of referrals were increasing over time for Caucasian infants and toddlers with disabilities and decreasing for minority infants and toddlers with disabilities; and
   - b. Providers reported a lack of training to inform referring and collaborating agencies about early intervention services.
2. **OSEP Monitoring Report – Onsite Visit February 2002:**
   - a. Public awareness activities were not effective in informing parents of infants and toddlers with disabilities of underrepresented. populations;
   - b. There was a lack of coordination for child find and public awareness between agencies (including child care, migrant Head Start, SSI);
   - c. Physician referrals were problematic including a "wait and see" attitude and a misperception that BabyNet involves health instead of development;
   - d. There was a lack of public awareness materials in daycare centers, pediatric offices or developmental centers; and
   - e. Public awareness materials were not distributed or available in Spanish.
3. **BabyTrac Data Reports – June 2003:**
   - a. BabyTrac data indicates expected number of infants and toddlers are not being identified.

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

OUTCOME: DHEC will ensure the development and implementation of a comprehensive, coordinated public awareness/child find system that results in the identification, evaluation, and assessment of all eligible infants and toddlers.

Goal 1: DHEC shall ensure that the child find system is coordinated with all major efforts to locate and identify eligible children conducted by other State agencies.

Goal 2: DHEC will ensure that the child find system is coordinated will all other major efforts to locate and identify children conducted by other State agencies, programs, and organizations, and DHEC shall conduct outreach to these entities including private entities such as pediatric practices and day care centers.

Goal 3: Families will have access to public awareness materials (to ensure identification of all eligible infants and toddlers and to enable access to culturally competent services) that inform and promote referral of eligible infants and toddlers to the Part C system.

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

With prior written approval from OSEP, adjustments to the Activities to Reach Results column listed in this table may be made when necessary to support achievement of compliance outcomes within the required timelines. The Activities to Reach Results will be evaluated every six months to determine their effectiveness and any need for change. Any requests for changes or amendments will be submitted to OSEP in writing.

Objectives/Activities to Reach Results	Verification	Target Completion Date	Date Completed
Objective CF-1: Develop and implement a set of coordinated statewide strategies for public awareness/child find (with emphasis on under-representation in BabyNet) with agencies/programs within and outside of DHEC.			
CF-1A. Review statewide information and establish baseline data for underrepresented populations. (Findings: 2a)	Report baseline data to OSEP regarding: • Number of infants and toddlers referred by underrepresented populations; • Number of infants and toddlers eligible by underrepresented populations (including rural, Catawba Nation, and other populations) and income (voluntary); • Number of infants and toddlers referred by private physicians, state agencies, hospitals, clinics, and other referral sources.	September 30, 2003 and quarterly thereafter.	
CF-1B Develop a list of DHEC programs that have a history of successful outreach to underrepresented populations and may potentially assist in public awareness/child find efforts (including Medical Home Project). (Findings: 2a, 2b)	The list of identified programs will be available for review.	September 30, 2003	
CF-1B.1 Convene a workgroup within DHEC to address child find/public awareness, especially related to underrepresented populations	Agenda, meeting minutes, and attendance available for review.	January 31, 2004	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Objectives/Activities to Reach Results	Verification	Target Completion Date	Date Completed
including individuals of lower socio- economic status.			
CF-1C. Convene a taskforce of the South Carolina Interagency Coordinating Council (SC-ICC) to address statewide child find/public awareness issues, especially related to underrepresented populations. (Findings: 2a, 2b)	Agenda, meeting minutes, and attendance from first meeting available for review.	February 29, 2004	
CF-1C.1 Develop statewide plan with strategies and timelines to address child find/public awareness issues, especially related to underrepresented populations.	Plan of strategies with timelines will be submitted to OSEP.	April 30, 2004	
CF-1C.2 Implement child find/public awareness improvement strategies according to timelines established by workgroup.	As documented in quarterly reports to OSEP.	December 31, 2004	
Objective CF-2: Reach out to private entities, particularly physicians, to facilitate their timely referral of potentially eligible infants and toddlers and increase their knowledge of BabyNet.			
CF-2A. Develop a target list of private agencies/ organizations (e.g. pediatricians, OB/GYN, therapy groups, midwife association, etc.) that could potentially be child find resources with particular emphasis on rural areas. (Findings: 2a, 2b, 2c,)	List available for review and disseminate via website.	October 31, 2003	
CF-2A.1 Seek SC-ICC input on which potential groups to target first for child find outreach. Physician organizations must be a priority.	Revised list is available for review	November 30, 2003	
CF-2A.2 Have individual/group meetings, at least one per	Lists of individual/group meetings held and joint child find strategies developed shall be available	November 30, 2003 and quarterly	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Objectives/Activities to Reach Results		Verification	Target Completion Date	Date Completed
	month, with targeted groups to facilitate collaboration to develop joint strategies for child find and increasing public awareness.	for review.	thereafter.	
CF-2A.3	Implement strategies developed in CF-2A.2 as scheduled.	Progress toward the joint strategies mentioned in CF-2A.2 (e.g., numbers of public awareness materials disseminated by date/location, dates and agendas of meetings, number of individuals attending) will be documented in quarterly reports to OSEP.	November 30, 2003 and quarterly thereafter.	
Objective CF-3: Develop and implement coordination activities related to infants and toddlers with disabilities with the Catawba Nation.				
CF-3A.	Conduct a series of planning meetings between BabyNet and members of the Catawba Nation. (Findings: 2a, 2b)	Agenda and minutes from the meeting are available for review.	First meeting by January 31, 2004	
CF-3B.	Develop a written agreement between the Catawba nation and DHEC to address child find and the provision of Part C services to Catawba Nation infants and toddlers. (Findings: 2a, 2b)	Submit to OSEP draft written agreement. Submit signed written agreement	May 31, 2004 July 31, 2004	
CF-3C.	Train BabyNet staff in cultural competence and agreement specifics. (Findings: 2a, 2b)	Agenda and list of participants from training is available for review.	July 2004	
CF-3D.	Implement the activities in the agreement. (Findings: 2a, 2b)	As documented in quarterly reports to OSEP.	September 30, 2004	
Objective CF-4: Implement statewide public awareness activities targeted to the general population and referral sources.				
CF-4A.	Revise BabyNet System display boards and create an additional board in Spanish. (Findings: 2a, 2e)	Display board in English and Spanish are available for use by BNCTs in local child find efforts. Use of the display boards for public awareness/child find activities will be reported.	November 30, 2003	
CF-4B.	Revise BabyNet System brochure with Spanish translation. (Findings: 2e)	Brochure in English and Spanish is available for review and disseminated. Number of brochures, where and to whom will be documented and	December 31, 2003	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Objectives/Activities to Reach Results	Verification	Target Completion Date	Date Completed
	reported.		
CF-4C. Create distribution process for use by BNCTs (including order and dissemination/tracking forms) for public awareness materials. (Findings: 2b, 2d)	Distribution/tracking process and forms are available for review and dissemination through BNCT is documented. How a family found out about BabyNet will be recorded through BabyTrac-II and analyzed to determine effectiveness of various strategies.	June 30, 2004	
CF-4D. Update (with input from families) and disseminate BabyNet video including a Spanish version. (Findings: 2b, 2d)	Video is available for review; list of doctor's offices, clinics, DHEC waiting rooms, and Health district waiting rooms, etc. in which video was distributed available for review.	September 30, 2004	
Objective CF-5: Ensure the development and implementation of individual BabyNet Coordination Team Child Find Plans as a component of the overall BNCT Compliance Plan process.			
CF-5A. Prepare data tables for the state and for each BNCT by county (by underrepresented group, including infants and toddlers with disabilities in rural areas) on numbers of infants and toddlers referred and determined eligible and sources of referrals. Districts will be ranked according to these variables. (Findings: 2a, 2b)	Data reports will be available for review and disseminated to SC-ICC and BNCTs. Report data quarterly to OSEP to monitor progress.	September 30, 2003 and quarterly thereafter.	
CF-5B. Consult with National Early Childhood Technical Assistance Center (NECTAC) for assistance in designing the process and tools BNCTs will use to develop and implement their local child find plans to target underrepresented populations including rural areas, timely referral, appropriate referral sources, and effective strategies. These plans will include root cause analysis with particular attention to problems SC is having now and identification of state causes, local causes, personnel issues	Procedures for the written plans and tools for local child find plans will be available for review.	October 31, 2003	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Objectives/Activities to Reach Results		Verification	Target Completion Date	Date Completed
and/or implementation issues. (Findings: 2a, 2c)				
CF-5B.1	Incorporate child find improvement planning into overall BabyNet Coordination Team Compliance Plans under General Supervision Objectives GS-5. (Findings: 2a, 2b, 2c, 2d, 2e)	BNCT Compliance Plans submitted in accordance with GS-5 will include improvement strategies to explain or address discrepancies in data. Compliance Plan progress will be reported to OSEP in quarterly reports.	Timelines as indicated in GS-5 target dates of completion.	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

South Carolina Department of Health and Environmental Control
Compliance Agreement
AREA 3: CHILD EVALUATION COMPLIANCE WORK PLAN

AREA OF NON-COMPLIANCE: DHEC does not ensure that all infants and toddlers are evaluated in all 5 developmental areas in the required timeframe.

BASELINE DATA:

1. **CIMP Self-Assessment Report – December 2000:**
   a. Need to decrease waiting times for evaluations was noted; and
   b. Developmental domain assessments were not conducted on all infants and toddlers that were referred prior to the initial IFSP.
2. **OSEP Monitoring Report – Onsite Visit February 2002:**
   a. Evaluations and assessments were not completed in all five developmental areas;
   b. Outcomes on initial IFSP were limited to future referrals for further evaluation and assessment;
   c. Infants and toddlers were not evaluated in the areas of vision and hearing;
   d. Evaluations and assessments were not completed within the 45-day timeline;
   e. There were waiting lists for evaluations and assessments; and
   f. Shortages of providers in some areas affected completion of evaluations and assessments in a timely manner.
3. **BabyTrac Data:**
   a. Data indicates continued delays in meeting 45-day requirement – June 2003.

OUTCOME: DHEC will ensure that infants and toddlers receive timely comprehensive evaluations in all five developmental areas to enable the initial IFSP team meeting to be convened within 45 calendar days from referral.

Goal 1: DHEC will ensure that evaluations and assessments are completed in all five developmental areas – cognitive development, physical development, including vision and hearing, communication development, social or emotional development and adaptive development.

Goal 2: DHEC will ensure that infants and toddlers receive timely evaluations and assessments in order to enable the initial IFSP team meeting to be convened within 45 calendar days from referral and eliminate waiting lists for evaluations and assessments.

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

With prior written approval from OSEP, adjustments to the Activities to Reach Results column listed in this table may be made when necessary to support achievement of compliance outcomes within the required timelines. The Activities to Reach Results will be evaluated every six months to determine their effectiveness and any need for change. Any requests for changes or amendments will be submitted to OSEP in writing.

Objectives/Activities to Reach Results	Verification	Target Completion Date	Date Completed
Objective EV-1: Develop and implement a coordinated statewide set of strategies to address systemic problems in the 45-day evaluation/assessment process, through analysis of root causes of problems as identified through the monthly self-report data from BabyNet Service Coordinators.			
EV-1A. Compile and analyze 3 months of self-reported data from every BN Service Coordinator through September 2003 to determine extent and root causes of noncompliance in this area. Data shall include: • Number of infants and toddlers with disabilities who were referred to Part C for evaluation and assessment; • Number of infants and toddlers who are waiting for evaluations and assessments in any of the five developmental areas within 45 days of referral; • Extent of the delay (i.e., the number of days past the 45 day timeline). • Number of additional infants and toddlers added to waiting list for evaluations and assessments during the reporting period. • Reasons for delay in evaluation/assessment including inadequate numbers of personnel in specific disciplines/BNCTs, and other factors including delays in report writing, scheduling IFSP meetings, and in referring for evaluation/assessments, etc. (Findings: 2a, 2c, 2d, 2f)	Statewide report on root causes of compliance problems with evaluation/ assessment process is submitted to OSEP.	October 31, 2003	
EV-1B. Based on the analysis of extent and root causes	Statewide strategies and plan for their	December 31, 2003	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Objectives/Activities to Reach Results	Verification	Target Completion Date	Date Completed
at the State systems level, the local community level, personnel issues, and implementation practices, the DHEC, with advice from the South Carolina Interagency Coordinating Council Personnel Committee, will identify systemic statewide strategies to resolve compliance problems in this area. Particular attention will be paid to shortages of discipline-specific personnel within BNCTs as well as other causes including delays in evaluation report writing, timely referrals for evaluations and delays in scheduling the IFSP meeting. (Findings: 2a, 2b, 2c, 2d, 2e, 2f)	implementation is submitted to OSEP.		
EV-1C. Implement systemic statewide strategies as determined by the plan including development and implementation of fiscal contracts, training for staff involved as necessary, and analysis of the number of personnel available to determine if adequate. (Findings: 2a, 2b, 2c, 2d, 2e, 2f)	Documentation of implementation of strategies submitted to OSEP.	March 31, 2004	
EV-1D. Continue to evaluate progress in this area through BabyTrac-II reports and make adjustments as necessary until desired result is reached. (Findings: 2a, 2b, 2c, 2d, 2e, 2f)	Monthly reports from BabyTrac-II will be available for review to track improved compliance.	First report available by January 31, 2004 and monthly thereafter.	
Objective EV-2: Ensure the development and implementation of individual BabyNet Coordination Child Evaluation Compliance Plans as a component of the overall BNCT Compliance Plan process.			
EV-2A Based upon data received in EV-1A, prepare data tables for each BNCT by county. Districts will be ranked according to the variables listed in the verification column. Each BN Coordination Team will demonstrate continuous improvement in ensuring all infants and toddlers receive timely evaluations and assessments, including vision and hearing within the 45-day timeline. Quarterly benchmarks (which shall be either a percentage or a numerical decrease from the	Data reports will be submitted to OSEP and disseminated to SC-ICC and BNCTs. In its quarterly report to OSEP, DHEC shall provide monthly summaries for each BNCT with a completed Compliance Plan that detail progress in meeting benchmarks. A narrative shall be included that details how DHEC has analyzed and responded to the data provided by each BNCT.	September 30, 2003	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Objectives/Activities to Reach Results	Verification	Target Completion Date	Date Completed
prior reporting period will be established for each BN Coordination Team and approved by OSEP). Data on each BNC team's progress in meeting the benchmarks shall be submitted to OSEP and incorporated into each respective BNCT Compliance Plan. Benchmarks must be established separately for those who were on a waiting list on August 31, 2003 and those who are identified after August 31, 2003. DHEC will monitor each BNCT to ensure that benchmarks are met and will intervene directly with individual BNCTs, as necessary. (Findings: 2a, 2b, 2c, 2d, 2e, 2f)			
EV-2B. Incorporate local infant and toddler evaluation improvement planning, including benchmarks, into overall BabyNet Coordination Team Compliance Plan Process under General Supervision Objectives GS-5. (Findings: 2a, 2b, 2c, 2d, 2e, 2f) Each BNCT will address local issues specific to the current evaluation and assessment process, additional funding and personnel needs, best practice models etc.	Compliance Plans submitted in accordance with GS-5 will include improvement strategies to address discrepancies in data in EV-1A. Benchmarks for the Target Group 1 (6 BNCTs) will be submitted to OSEP. Benchmarks for the Target Group 2 (6 BNCTs) will be submitted to OSEP. In its quarterly report to OSEP, DHEC shall provide monthly summaries for each BNCT with a completed Compliance Plan that detail progress in meeting benchmarks. A narrative shall be included that details how DHEC has analyzed and responded to the data provided by each BNCT.	Timelines as indicated in GS-5 target dates of completion. January 31, 2004 June 30, 2004 January 31, 2004 and quarterly progress reports thereafter.	
Objective EV-3: With parental consent, infants and toddlers being evaluated for eligibility will receive vision and hearing screenings.			
EV-3A. Develop vision and hearing screening policies and procedures. (Finding: 2c)	Vision and hearing screening policies/procedures submitted to OSEP.	October 31, 2003	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Objectives/Activities to Reach Results	Verification	Target Completion Date	Date Completed
EV-3B. Develop and implement plan to train staff in implementation of vision and hearing screening policies/procedures. (Finding: 2c)	Training plan and documentation of completed training available for review.	January 31, 2004	
EV-3C. Continue to evaluate progress in this area through BabyTrac-II reports and data collected and analyzed in EV-1A. Make adjustments as necessary until desired result is reached. (Finding: 2c)	BabyNet Coordination Teams to track and report monthly (see EV-1A) the: • Number of infants and toddlers not evaluated in the area of vision within 45 days from the date of referral and the number of additional children added to waiting list for vision evaluations during the reported period; • Number of children not evaluated in the area of hearing within 45 days from the date of referral and the number of additional children added to waiting list for hearing evaluations during the reported period. DHEC to report on data to OSEP quarterly. Continuous progress will be documented until, no later than three years from the date of the compliance agreement, the number of children not receiving timely vision and hearing evaluations is zero.	First report available by March 31, 2004 and monthly thereafter.	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

South Carolina Department of Health and Environmental Control
Compliance Agreement
AREA 4: IFSP AND SERVICES COMPLIANCE WORK PLAN

AREA OF NON-COMPLIANCE: DHEC does not ensure that IFSPs are developed with the following required content- present levels of development and a statement of early intervention services needed. Further, DHEC is unable to ensure the provision of needed IFSP services for all eligible infants and toddlers and their families, as required by Part C regulations.

BASELINE DATA:

1. **CIMP Self-Assessment Report – December 2000:**
   a. Not all eligible infants and toddlers with disabilities were receiving all the services written in the IFSP as evidenced by waiting lists for services, particularly speech and occupational therapy services; and
   b. IFSP services are not consistently provided especially in rural areas, due to a lack of available providers.
2. **OSEP Monitoring Report – Onsite Visit February 2002:**
   a. Present levels of functioning were written on the IFSP in some developmental areas, but were frequently omitted for the physical and communication developmental areas;
   b. All needed services, including family support services, were not listed on the IFSP;
   c. Providers reported that is was difficult to obtain counseling services and parenting classes;
   d. EI services were delayed;
   e. For some infants and toddlers with disabilities and families, EI services were not provided; and
   f. Waiting lists existed for both evaluations and services.

OUTCOME: DHEC will ensure the development of complete IFSPs for all eligible infants and toddlers with disabilities and their families and ensure that all infants and toddlers with disabilities and their families are provided early intervention services in a timely manner.

Goal 1: All IFSPs will contain the required components in accordance with Part C.

Goal 2: All infants and toddlers with disabilities and their families will receive all services identified on their IFSP in a timely manner and waiting lists for all early intervention services will be eliminated.

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

With prior written approval from OSEP, adjustments to the Activities to Reach Results column listed in this table may be made when necessary to support achievement of compliance outcomes within the required timelines. The Activities to Reach Results will be evaluated every six months to determine their effectiveness and any need for change. Any requests for changes or amendments will be submitted to OSEP in writing.

Objectives/Activities to Reach Results	Documentation of Activities	Target Completion Date	Date Completed
Objective SP-1: Develop and implement a coordinated statewide set of strategies to ensure IFSPs are completed in accordance with Part C regulations and early intervention services are delivered in a timely manner, through analysis of root causes of problems as identified through the monthly self-report data from BabyNet Service Coordinators.			
SP-1A. Compile and analyze 3 months of self-reported data through October 2003 to determine extent and root causes of difficulties in this area. Data to include: (1) the number of infants and toddlers with disabilities with IFSPs that do not list the present levels of functioning in each of the five developmental areas; (2) the number of infants and toddlers with disabilities with IFSPs that do not provide a statement of early intervention services needed on the IFSP; (3) the number of infants and toddlers with disabilities for whom the initial IFSP was not completed within 45 days from the date of referral and the number of additional infants and toddlers with disabilities added to the list during that reporting period; (4) the number of infants and toddlers with disabilities and their families who are not receiving all the Part C services listed on the infant or toddler's IFSP; (5) the type(s) of early intervention service(s) (including services to families as well as to infants and toddlers with disabilities) that have waiting lists and for each early intervention service, the number of infants and toddlers with disabilities on the waiting list for that particular intervention service and the number of additional infants and toddlers	State report on extent and root causes of compliance problem with (1) IFSP content requirements being met, (2) completion in 45-day timeline for initial IFSP and (3) timely provision of early intervention services process will be submitted to OSEP.	November 30, 2003	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Objectives/Activities to Reach Results	Documentation of Activities	Target Completion Date	Date Completed
with disabilities added to the waiting list for that service during the reporting period; (6) For each early intervention service for which there is a waiting list, the minimum and maximum waiting days that each eligible infant or toddler or the family is on the waiting list. (Findings: 2a, 2b, 2c, 2d, 2e, 2f)			
SP-1B. Based on the analysis of the extent and root causes, identify systemic statewide strategies (such as single provider contracts for specific areas, reimbursement strategies, etc.) to resolve compliance problems in this area related to unavailability of EI services, waiting lists, non compliant providers, etc. (Findings: 2a, 2b, 2c, 2d, 2e, 2f)	State strategies and plan for their implementation are submitted to OSEP.	January 31, 2004	
SP-1C. Implement systemic statewide strategies as determined by the plan. (Findings: 2a, 2b, 2c, 2d, 2e, 2f)	Documentation of implementation of strategies is submitted to OSEP.	April 30, 2004	
SP-1D. Continue to evaluate progress in this area through BabyTrac-II reports and data collected through SP-1A and make adjustments as necessary until desired result is reached. (Findings: 2a, 2b, 2c, 2d, 2e, 2f)	Monthly reports from BabyTrac-II available for review to track compliance.	First report available by February 29, 2004 and monthly thereafter.	
Objective SP-2: Ensure the development and implementation of IFSP completion and timely early intervention services Compliance Plans as part of the overall BN Coordination Team Compliance Plan process.			
SP-2A. Incorporate local IFSP completion and timely services improvement planning into overall BabyNet Coordination Team Compliance Plan Process under General Supervision Objectives GS-5. Each BNCT will address local issues specific to the current delivery of IFSP services in a timely manner to include resource and personnel issues. Each BN Coordination Team	Compliance Plans submitted in accordance with GS-5 will include improvement strategies to address discrepancies in data in SP-1A. Benchmarks for the Target Group 1 (6 BNCTs) will be submitted to OSEP.	Timelines as indicated in GS-5 target dates of completion. January 31, 2004	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Objectives/Activities to Reach Results	Documentation of Activities	Target Completion Date	Date Completed
will demonstrate completing IFSPs, continuous improvement in eliminating waiting lists for each quarter for timely convening of initial IFSP meeting within 45 days, and timely provision of early intervention services. Quarterly benchmarks (which shall be either a percentage or a numerical decrease from the prior reporting period will be established for each BN Coordination Team and approved by OSEP). Data on each BNC team's progress in meeting the benchmarks shall be submitted to OSEP and incorporated into each respective BNCT Compliance Plan. DHEC will monitor each BNCT to ensure that benchmarks are met and will intervene directly (including using appropriate sanctions) with individual BNCTs, as necessary. (Findings: 2a, 2b, 2c, 2d, 2e, 2f)	Benchmarks for the Target Group 2 (6 BNCTs) will be submitted to OSEP. In its quarterly report to OSEP, DHEC shall provide monthly summaries for each BNCT with a completed Compliance Plan that detail progress in meeting benchmarks. A narrative shall be included that details how DHEC has analyzed and responded to the data provided by each BNCT.	June 30, 2004 January 31, 2004 and quarterly progress reports thereafter.	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

South Carolina Department of Health and Environmental Control
Compliance Agreement
AREA 5: TRANSITION COMPLIANCE WORK PLAN

AREA OF NON-COMPLIANCE: DHEC does not ensure that the local education agency is notified of children who are approaching the age for transition, holding a transition meeting, and ensuring that a transition plan is developed and implemented in accordance with the requirements of Part C of IDEA.

BASELINE DATA:

1. **CIMP Self-Assessment Report – December 2000:**
   a. Some eligible children were not receiving timely transition planning; and
   b. Some children with disabilities, eligible under Part B, may not receive appropriate special education and related services by their third birthday.
2. **OSEP Monitoring Report Findings – Onsite Visit February 2002:**
   a. School districts were not being notified of BabyNet eligible children approaching three;
   b. Transition meetings were not being held in accordance with Part C requirements; and
   c. Transition plans were not being developed and implemented in accordance with Part C requirements.
3. **618 Data – December 1, 2002**
   a. Data inconsistencies regarding number of children transitioning to SCDE;
   b. Children not being transitioned into LEA by their third birthday.

OUTCOME: DHEC will ensure that timely transition notices are provided and transition meetings are held and that transition plans are developed to assist all eligible children and their families as they exit Part C.

Goal 1: DHEC will ensure that the local education agency is notified of children who are approaching the age for transition at least 90 days prior to the child turning three in accordance with the requirements of Part C.

Goal 2: DHEC will ensure that a transition meeting is held in accordance with the requirements of Part C of IDEA.

Goal 3: DHEC will ensure that transition plans are developed and implemented in accordance with the requirements under Part C.

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

With prior written approval from OSEP, adjustments to the Activities to Reach Results column listed in this table may be made when necessary to support achievement of compliance outcomes within the required timelines. The Activities to Reach Results will be evaluated every six months to determine their effectiveness and any need for change. Any requests for changes or amendments will be submitted to OSEP in writing.

Objectives/Activities to Reach Results	Verification	Target Completion Date	Date Completed
Objective TR-1: Jointly with South Carolina Department of Education (SCDE), ensure that children exiting BabyNet, who are eligible for preschool special education, timely transition planning.			
TR-1A. Track monthly transition compliance self-report data from all service coordinators. Data shall include: • Number of children for whom the LEA has not been notified of Part C children approaching the age of three; • The number of children for whom a transition meeting has not been held within the minimum 90-day period prior to the child's turning age three; • The number of children who do not have transition plans. (Findings: 2a, 2b, 2c)	Monthly statewide reports on compliance with transition submitted to OSEP quarterly.	September 30, 2003 & monthly thereafter.	
TR-1B. Send compiled follow-up Local Education Agency (LEA) data to SCDE for SCDE response to LEAs, as needed. Data to report on preschoolers who were: • Evaluated and determined not eligible for Part B; or • Evaluated and determined eligible for Part B (and date IEP was completed). (Finding: 2b)	Reports submitted to SCDE for analysis and any necessary action. Reports submitted to OSEP quarterly.	September 30, 2003 and quarterly thereafter.	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Objective TR-2: Ensure the development and implementation of individual BabyNet Coordination Team Transition Compliance Plans as a component of the overall BNCT Compliance Plans.				
TR-2A.	Incorporate transition improvement planning into overall BabyNet Coordination Team Compliance Plans under General Supervision Objectives GS-5. Each BN Coordination Team will demonstrate continuous improvement in ensuring that all eligible children receive required Part C Transition planning in a timely manner when exiting BabyNet each quarter. Quarterly benchmarks (which shall be either a percentage or a numerical decrease from the prior reporting period, will be established for each BNCT). Data on BNCT's progress in meeting the benchmarks shall be submitted to OSEP and incorporated into each respective BNCT Compliance Plan. DHEC will monitor each BNCT to ensure that benchmarks are met and will intervene directly (including using appropriate sanctions) with individual BNCTs, as necessary. (Findings: 2a, 2b, 2c)	BNCT Compliance Plans submitted in accordance with GS-5 will include improvement strategies to address discrepancies in data in TR-1A. Compliance Plan progress will be reported to OSEP in quarterly reports. Benchmarks for the Target Group 1 (6 BNCTs) will be submitted to OSEP. Benchmarks for the Target Group 2 (6 BNCTs) will be submitted to OSEP. In its quarterly report to OSEP, DHEC shall provide monthly summaries for each BNCT with a completed Compliance Plan that detail progress in meeting benchmarks. A narrative shall be included that details how DHEC has analyzed and responded to the data provided by each BNCT.	Timelines as indicated in GS-5 target dates of completion. January 31, 2004 June 30, 2004 January 31, 2004 and quarterly progress reports thereafter.	
Objective TR-3: Jointly with the South Carolina Department of Education (SCDE), ensure statewide development and implementation of Local Interagency Transition Agreements (LITAs), facilitated through BabyNet Coordination Teams, which outline strategies for the effective transition of all children exiting the Part C system.				
TR-3A.	Submission of all draft LITAs for review to DHEC and SCDE. (Findings: 2a, 2b, 2c)	Draft LITAs are available for review.	September 30, 2003	
TR-3B.	All final LITAs will be completed, approved and signed. (Findings: 2a, 2b, 2c)	Approved LITAs with signatures are available for review.	November 30, 2003	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

[FR Doc. 03-28174 Filed 11-7-03; 8:45 am]
BILLING CODE 4000-01-C

TR-3C.	Review and revise joint procedures with SCDE to determine steps to ensure continuing compliance with this objective. (Findings: 2a, 2b, 2c)	New joint monitoring procedures will be available for review. Provide OSEP with narrative summary of LITA implementation.	June 30, 2004 and quarterly thereafter.	
Objective TR-4: Jointly with SCDE, to ensure smooth transitions for children exiting from BabyNet, complete a transition guidance document for families that outlines the responsibilities of programs, the steps that will occur, services available and the role and rights of families in the process.				
TR-4A.	Convene an interagency workgroup with parent representation to design the document. (Findings: 2a, 2b, 2c)	Minutes of first meeting available for review.	October 31, 2003	
TR-4B.	With NECTAC assistance, collect sample guidance documents from other states. (Findings: 2a, 2b, 2c)	Documents available for review.	October 31, 2003	
TR-4C.	Complete draft guidance document obtaining input from workgroup throughout. (Findings: 2a, 2b, 2c)	Draft document available for review.	January31, 2004	
TR-4D.	Complete and disseminate final document. (Findings: 2a, 2b, 2c)	Final document and dissemination plans available for review.	April 30, 2004	
TR-4E.	Translate and disseminate document into two additional languages as determined by South Carolina population needs. (Findings: 2a, 2b, 2c)	Final translated documents and dissemination plans available for review. Confirm to OSEP when document disseminated.	June 30, 2004	
Objective TR-5: With SCDE, design and implement joint training and TA activities related to smooth and effective transition.				
TR-5A.	Conduct Statewide Transition Teleconference for BabyNet Service Coordinators and Part B staff. (Findings: 2a, 2b, 2c)	Agenda and evaluations will be available for review.	October 31, 2003	
TR-5B.	Conduct ongoing Part C Transition Training for new staff. (Findings: 2a, 2b, 2c)	Documentation of training schedule will be available for review in quarterly report Confirm to OSEP when training is completed.	November 30, 2003 and quarterly thereafter.	

*The finding numbers referenced here correspond to the summary of OSEP's findings on page 1 of this chart.

Federal Register

Monday,
November 10, 2003

Part V

The President

Federal Register
Vol. 68, No. 217
Monday, November 10, 2003

Presidential Documents

Title 3—

The President

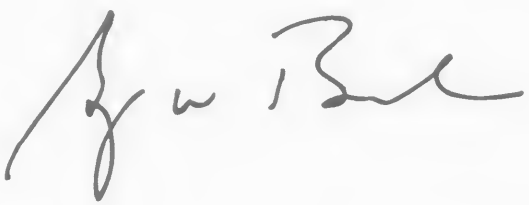
Memorandum of October 20, 2003

Certification Concerning U.S. Participation in the U.N. Mission in Liberia Consistent With Section 2005 of the American Servicemembers' Protection Act

Memorandum for the Secretary of State

Consistent with section 2005 of the American Servicemembers' Protection Act of 2002 (Public Law 107–206; 22 U.S.C. 7421 *et seq.*), concerning the participation of members of the Armed Forces of the United States in certain United Nations peacekeeping and peace enforcement operations, I hereby certify that members of the U.S. Armed Forces participating in the United Nations Mission in Liberia (UNMIL) are without risk of criminal prosecution or other assertion of jurisdiction by the International Criminal Court because, in authorizing the operation, the United Nations Security Council (in Resolutions 1497 (2003) and 1509 (2003)) has provided for the exclusive jurisdiction of the contributing State for all acts or omissions arising out of or related to UNMIL, unless such exclusive jurisdiction is expressly waived.

You are authorized and directed to submit this certification to the Congress, and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 20, 2003.

[FR Doc. 03–28358
Filed 11–7–03; 8:45 am]
Billing code 4710–10–P

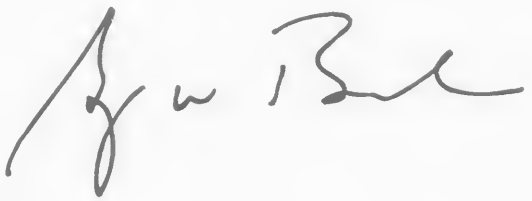
Presidential Documents

Presidential Determination No. 2004–05 of October 21, 2003

Presidential Determination on the Sudan Peace Act

Memorandum for the Secretary of State

Consistent with section 6(b) (1) (A) of the Sudan Peace Act (Public Law 107–245), I hereby determine and certify that the Government of Sudan and the Sudan People's Liberation Movement are negotiating in good faith and that negotiations should continue. You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 21, 2003.

[FR Doc. 03–28359
Filed 11–07–03; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2004–06 of October 21, 2003

Presidential Determination on FY 2004 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status Consistent with Sections 207 and 101(a)(42), respectively, of the Immigration and Nationality Act, and Determination Consistent with Section 2 (b) (2) of the Migration and Refugee Assistance Act, as amended

Memorandum for the Secretary of State

Consistent with section 207 of the Immigration and Nationality Act (the "Act") (8 U.S.C. 1157), as amended, and after appropriate consultations with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 70,000 refugees to the United States during FY 2004 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 2004 with Federal refugee resettlement assistance under the Amerasian immigrant admissions program, as provided below.

The 70,000 admissions numbers shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia region shall include persons admitted to the United States during FY 2004 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100–202 (Amerasian immigrants and their family members); provided further that the number allocated to the former Soviet Union shall include persons admitted who were nationals of the former Soviet Union, or in the case of persons having no nationality, who were habitual residents of the former Soviet Union, prior to September 2, 1991:

Africa	25,000
East Asia	6,500
Europe and Central Asia	13,000
Latin America/Caribbean	3,500
Near East/South Asia	2,000
Unallocated Reserve	20,000

The 20,000 unallocated refugee numbers shall be allocated to regional ceilings as needed. Upon providing notification to the Judiciary Committees of the Congress, you are hereby authorized to use unallocated numbers in regions where the need for additional numbers arises.

Additionally, upon notification to the Judiciary Committees of the Congress, you are further authorized to transfer unused admission numbers allocated to a particular region to one or more other regions, if there is a need for greater numbers for the region or regions to which the numbers are being transferred. Consistent with section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, I hereby determine that assistance to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the

foreign policy interests of the United States and designate such persons for this purpose.

An additional 10,000 refugee admissions numbers shall be made available during FY 2004 for the adjustment to permanent resident status under section 209(b) of the Immigration and Nationality Act (8 U.S.C. 1159(b)) of aliens who have been granted asylum in the United States under section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest.

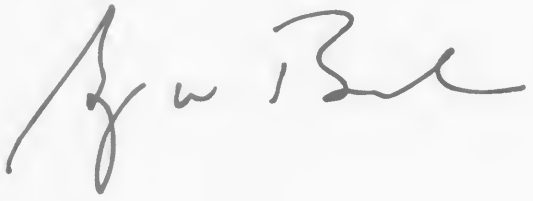
Consistent with section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)) and after appropriate consultation with the Congress, I also specify that, for FY 2004, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

a. Persons in Vietnam

b. Persons in Cuba

c. Persons in the former Soviet Union

You are authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 21, 2003.

[FR Doc. 03–28360
Filed 11–7–03; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2004–07 of November 1, 2003

Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court

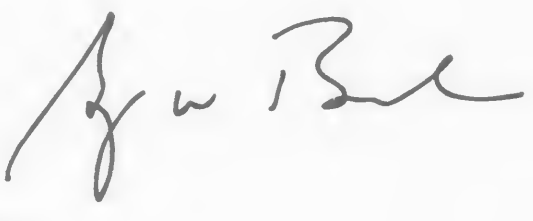
Memorandum for the Secretary of State

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002, (the "Act"), title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby determine that:

Antigua and Barbuda, Botswana, East Timor, Ghana, Malawi, Nigeria, and Uganda have each entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such countries, and waive the prohibition of section 2007(a) of the Act with respect to these countries for as long as such agreement remains in force; and

It is important to the national security interest of the United States to waive, for a period of 6 months from the date of this determination, the prohibition of section 2007(a) with respect to Romania, and waive that prohibition with respect to this country for that period.

You are authorized and directed to report this determination to the Congress, and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, November 1, 2003.

[FR Doc. 03–28361
Filed 11–7–03; 8:45 am]
Billing code 4710–10–P

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Monday, November 10, 2003

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session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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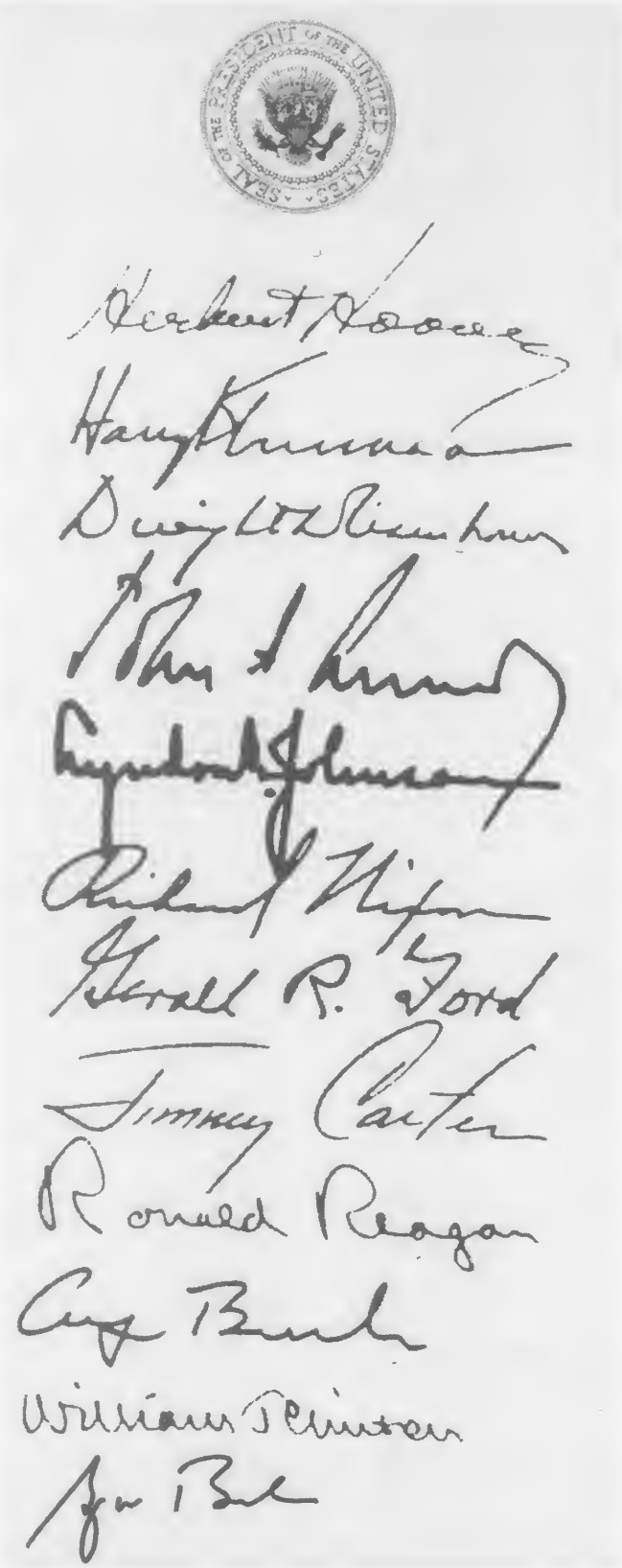

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